

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1955

No. 92

MABEL BLACK AND T. Y. WULFF, IN A REPRESENTATIVE CAPACITY FOR, BY AND ON BEHALF OF BIO-LAB UNION OF LOCAL 225, UNITED OFFICE AND PROFESSIONAL WORKERS OF AMERICA, ITS OFFICERS AND MEMBERS, PETITIONERS,

vs.

CUTTER LABORATORIES, A CORPORATION

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETITION FOR CERTIORARI FILED MAY 23, 1955

CERTIORARI GRANTED OCTOBER 10, 1955

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

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**IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE CITY AND COUNTY
OF SAN FRANCISCO.**

No. 402101

In the Matter of the Petition of MABEL BLACK and T. Y.
WULFE, in a Representative Capacity for, by and on Be-
half of BIO-LAB UNION OF LOCAL 225, UNITED OFFICE AND
PROFESSIONAL WORKERS OF AMERICA, Its Officers and Mem-
bers, for an Order Confirming an Award in Arbitration,
Petitioners,

vs.

CUTTER LABORATORIES, a Corporation, Respondent, and
Adverse Party

CLERK'S TRANSCRIPT

APPEARANCES

Attorneys for Petitioners: Bertram Edises, Esq., 1440
Broadway, Oakland, California.

Attorneys for Respondent, and Adverse Party: Gardiner
Johnson, Esq., Thomas E. Stanton, Jr., Esq., 111 Sutter
Street, San Francisco, California.

[fol. 4]

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND
FOR THE CITY AND COUNTY OF SAN FRANCISCO

[Title omitted]

No. 402101

PETITION TO CONFIRM ARBITRATION AWARD—Filed November
14, 1950

To the Honorable Superior Court of the State of California,
in and for the City and County of San Francisco:

Your petitioners Mabel Black and T. Y. Wulff, in a representative capacity for and on behalf of Bio-Lab Union of Local 225, United Office and Professional Workers of America, its officers and members, respectfully represent:

I

That Local 255 at all times hereinafter mentioned was [fol. 5] and now is a voluntary unincorporated association and a local labor union of the United Office and Professional Workers of America, said local union having its main office in Oakland, California, and existing for the purpose of improving wages, hours, and working conditions of all workers within its jurisdiction who are employed in offices, laboratories and plants in the County of Alameda, State of California, and the immediate vicinity thereof, and in general conducting the ordinary activities of a labor organization; that Bio-Lab Union of Local 225 is a Chapter of said Local Union consisting of several hundred employees who are employed at Cutter Laboratories; that the members of said labor organization are numerous and that the questions involved in the within cause of action are of common and general interest to all of said members and to all of said workers, and that it is impracticable to bring them all before this court; that petitioner Mabel Black is now and at all times herein mentioned has been a member in good standing and President of the said Local Union; that petitioner T. Y. Wulff is now and at all times herein mentioned has been a member in good standing and Chapter Chair-

man of the Chapter of said Local Union known as Bio-Lab Union of Local 225; that all members of said Local Union are united in the common interest of enforcing the terms of the collective bargaining agreement hereinafter described and the Arbitration Award handed down under the provisions and terms of said collective bargaining agreement hereinafter described and that your petitioners bring this proceeding in a representative capacity for and on behalf of said Local Union, its officers and members, and more particularly on behalf of said Chapter, its officers and members, all of whom are likewise members of the said Local Union.

IP

That to the best of your petitioners' information and belief Cutter Laboratories is a corporation incorporated in the State of California and having its principal place of business in the City of Berkeley, County of Alameda, State of California.

III

That heretofore on or about the 23rd day of July, 1948, said Local Union entered into a certain collective bargaining agreement with said Cutter Laboratories, hereinafter referred to as "the Company", covering wages, hours, and working conditions, for all of the employees of the Company at Berkeley, California, with the exception of executives, and certain administrative employees, confidential employees, and supervisory employees; that a copy of said Agreement is attached hereto and is marked "Exhibit B" and made a part hereof.

IV

That thereafter, in accordance with the said collective bargaining agreement, the parties hereto entered into arbitration proceedings for the arbitration of a dispute over the discharge of one Doris Walker, a member of said Local Union and Chapter; that said arbitration proceedings were held and had within the City and County of San Francisco, State of California, before a board of three arbitrators composed as follows: Mr. Hubert Wyckoff, neutral arbitrator; Mr. J. Paul St. Suré, designated by the Company; Mr. Paul Heide, designated by the Union; that

the designation of the neutral arbitrator is annexed hereto as "Exhibit C" and made a part hereof; that a copy of the duly acknowledged Award and Decision of the Arbitrators is attached hereto and made a part of this petition and designated as "Exhibit A"; that Mr. J. Paul St. Sure, the member of said board of arbitration designated by the Company, dissented therefrom.

V

That the within described Award was made less than three months from the date of this petition; that said Award was not procured by corruption, fraud, or undue means, nor was there corruption in the arbitrators, or either of them; that the neutral arbitrator, Hubert Wyckoff, esq., was mutually agreed to by the respective parties; that all of the preliminary procedural requirements to the arbitration, as provided in said agreement, had been met.

Wherefore, petitioners pray that this Court issues its Order confirming the aforementioned Award, as prescribed by law.

Edises and Treuhaft, By Bertram Edises Attorneys
for Petitioners.

[fol. 8] *Duly sworn to by Mabel Black. Jurat omitted in printing.*

[fol. 9] EXHIBIT "A" TO PETITION

AMERICAN ARBITRATION ASSOCIATION, ADMINISTRATOR
VOLUNTARY LABOR ARBITRATION TRIBUNAL

In the Matter of the Arbitration Between CUTTER LABOR-
TOMES and BIO LAB UNION OF LOCAL 225, UNITED OFFICE
AND PROFESSIONAL WORKERS OF AMERICA

Award of Arbitrators

We, the Undersigned Arbitrators, having been designated in accordance with the Collective Bargaining Agreement entered into by the above named Parties, and dated July 23, 1948 as amended, and having been duly sworn and hav-

ing duly heard the proofs and allegations of the Parties, Award, as follows: Annexed hereto and made a part hereof is the Award consisting of thirty-seven (37) pages.

Dated at San Francisco California September 16th 1950.

STATE OF CALIFORNIA,

City and County of Francisco, ss:

On this 16th day of September, 1950, before me personally appeared Hubert Wyckoff, Paul Heide and J. Paul St. Sure, to be known and known to me to be the individuals described in and who executed the foregoing instrument and [fol. 10] acknowledged to me that they executed the same.

(S.) E. D. Conklin, Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires Feb. 22, 1953.

Case No. L-6463, NYB-L-14-50

[fol. 11]

AWARD

Cutter Laboratories and Bio-Lab Union of Local 225 United Office and Professional Workers of America are in dispute over the discharge of Doris Walker. She was employed by the Company October 10, 1946 to perform clerical work, first as Label Clerk in the Production Planning Department and then as Clerk Typist in the Purchasing Department. She was discharged October 6, 1949.

The parties were heard July 26, 27, 28 and August 2, 3, 4, 1950, by a board of three arbitrators duly constituted by stipulation of the parties under the auspices of the American Arbitration Association. All witnesses were duly sworn. The appearances were: on behalf of the Company, Gardiner Johnson and Thomas E. Stanton, its attorneys; and on behalf of the Union, Edises & Treuhaft by Bertram Edises, its attorneys. The evidence showed and it was stipulated by the parties that all of the preliminary procedural requirements to the arbitration had been met, those specified in the collective bargaining agreement and also in the rules of the American Arbitration Association.

Upon consultation among us and upon consideration, we find and award as follows.

[fol. 12] *The Collective Bargaining Agreement Dated July 23, 1948*

The pertinent portions of the collective bargaining agreement in effect when the discharge took place are:

"Article I—Recognition and Union Security

Section 3 The Company agrees that it will not interfere with, restrain or coerce said employees because of membership or ~~lawful~~ activity in the Union nor will it attempt to discourage membership in the Union by discrimination in respect to hiring, tenure of employment or any other term or condition of employment."

"Article VIII—Discharges and Layoffs

Section 1 No employee shall be discharged except for just cause. The provisions of this section shall not apply to personal reductions for lack of work or to effect economies.

In the event an employee is discharged without just cause, he shall be reinstated without loss of pay, seniority, or other benefit, subject to the following limitations:

In case of reinstatement, the total back pay award allowable shall be limited to the full time regular pay of the employee for the period he was off the payroll, or a period of eight (8) weeks, whichever period is the shorter, less any gross earnings or unemployment compensation received or earned during such period.

The employee shall make every reasonable effort to minimize his damages by seeking and obtaining gainful employment during the period he is off the payroll, and any back pay award shall not include any time during which the employee has failed to meet this obligation. If the employee is disabled by sickness or injury during any part of such period, his rights during such period of disability shall be limited to the sick leave benefits to which he would have been entitled if he had remained on the payroll.

Section 2 The Company agrees that no employee shall be discharged for general inefficiency or low standard of

work unless he had been warned of his short-comings a reasonable period of time in advance in order to afford him an opportunity to correct them. This limitation shall not apply in case of flagrant misconduct on the part of the employee.

Section 3 Except in cases mentioned in the preceding section, an employee whose name is on the seniority list shall be given written notice of dismissal, stating the reasons for his termination two (2) weeks before the termination of his pay. A copy of any such notice shall be delivered to the Union without delay."

[fol. 14] *Article X Section 1* of the agreement contains a mutual agreement not to discriminate against "a present or prospective employee or member because of race, color, creed, national origin, religious belief, or Union affiliation". The Article carries the heading "Hiring and Rehiring" and it first appeared in the agreement August 13, 1945 by virtue of a Tenth Regional War Labor Board directive of June 18, 1945 which included "political" as well as "religious belief". By negotiation, "political belief" was amended out of the section. In this context and setting, therefore, Section 1 of Article X seems to authorize the practice of discrimination because of political belief; but whether the Section was intended to have any vitality outside of the field of hiring and rehiring is open to some doubt. In any event, we are unable to conclude that the Section limits or modifies the positive promises contained in Article I Section 3 or Article VIII Section 1 in such a way as to dispose of this dispute.

2. The reasons stated by the Company for the discharge.

When Doris Walker was discharged on October 6 1949, a written notice was read to her by a Company official in the presence of another Company official, Union assistant Shop Steward and a Company stenographer. The notice [fol. 15] read as follows:

"Mrs. Walker:

As you are aware, the company has known for some time that when you applied for work with Cutter Laboratories on October 4, 1946, you made a number of

false representations on your "Application for Employment".

As we know now, you falsified the statement of your education so as to conceal the fact that you had completed a law school course at the University of California's School of Jurisprudence at Berkeley in May, 1942. You concealed the facts that you received the degree of Bachelor of Laws in May, 1942, and that you were admitted to the State Bar of California on December 8, 1942. You concealed that since that date you have at all times been admitted and entitled to practice as an attorney before all of the Courts of California.

We know now that by falsification of the name of a previous employer, you concealed the fact that from June, 1942 to February, 1944 you were employed by the Federal Government's Office of Price Administration, including employment as an Enforcement Attorney at a salary of about \$3,200.00 a year.

We know now that you deliberately concealed from us that from February 1944 to December, 1945 you [fol. 16] were employed as an attorney by Gladstein, Grossman, Sawyer and Edises, a well-known firm of lawyers specializing in labor cases.

You know that a few weeks ago the "Labor Herald", the official CIO newspaper, stated that the National Labor Relations Board had sustained a cannery firm that had discharged you for refusing to answer whether or not you were a Communist.

We have checked the records. We know now that you deliberately concealed that in 1946, just before you applied for work here, you were employed by a series of canneries and had been discharged by them.

Ordinarily, an employee of the Company would be discharged immediately for falsifying material facts on an "Application for Employment". Because you were an officer of the Union we kept you on the pay roll rather than open ourselves to a charge of persecuting a union officer. We have given your case careful consideration because we know very well that no matter how strong the case against you there will be a claim of discrimination because of union activities.

Because no employer wants to become involved in a dispute of that kind we have been patient and deliberate in our consideration of your misconduct.

On October 1, 1948, when you testified under oath [fol. 17] before a Trial Examiner of the National Labor Relations Board, you refused to answer the question as to whether or not you were a member of the Communist Party.

You refused to answer under oath the question as to whether or not you were or had been a member of the Federal Workers' Branch No. 3 of the Communist Party.

You refused to testify under oath whether or not you were or had been a member of the South Side Professional Club of the Communist Party.

We are convinced now, that you were and still are a member of the Communist Party, that you were a member of the Federal Workers' Branch No. 3 of the Communist Party, and that you were a member of the South Side Professional Club of the Communist Party.

Our recent investigation of your past record has uncovered previously unknown conduct that goes far beyond a mere concealment of material facts. We have just completed a thorough investigation and have a full report upon your past activities. We realize now the importance of the facts that you concealed from us. We realize the full implications of your falsification and misrepresentations. A follow-up and investigation of the "Labor Heralds" recent revelations has [fol. 18] uncovered a situation far more grave than we expected.

We are convinced now that for a number of years, you have been and still are a member of the Communist Party. We are convinced beyond any question that for a number of years you have participated actively in the Communist Party's activities.

The nature of our company's business requires more than the usual precaution against sabotage and subversion. Upon a disclosure that any employee is a member of the Communist Party, or has participated

in other subversive or revolutionary activity, we conceive it to be the responsibility of management to take action.

Confronted with such a situation, any inclination to be lenient or to grant a union official special consideration is out. In the face of your record there is no alternative open to us except to terminate your services at once. Accordingly, you are notified now that you are discharged for the causes mentioned. You will be paid the full amount due to you promptly."

Doris Walker was not asked whether these charges were true or false; nor was she afforded an opportunity to answer or explain them if she chose to do so.

[fol. 19] 3. *The Company and its operations.*

The Company, with offices, barns and laboratories located in Berkeley California, is engaged in the manufacture on a mass production scale, and in the sale throughout the United States and certain foreign countries, of vaccines, serums, antitoxins, dextrose, penicillin and other allied biological and pharmaceutical products. These products are used by the military as well as civilians; and the Company is said to be "in a rather unique position as far as the armed forces are concerned inasmuch as we are the only laboratory of our type with a complete line of biologicals; we are the only laboratory producing penicillin west of the Mississippi. The (military) constantly orders its West Coast Supplies from us to keep us in constant readiness for emergency . . . So that there is no difference in the present time than during the past four years, except the stepped-up volume of ordering and the emergency nature of the orders at present." It is conceded that the Company's operations were just as delicate and just as important when Doris Walker was employed as when she was discharged.

During World War II the Company was subject to stringent security control by the Federal authorities. The plant was under military control in this regard: There were elaborate rules and regulations; armed guards; patrols; the checking of both old employees and applicants; fingerprinting, etc.

[fol. 20] The products and processes of the plant are said to be peculiarly subject to sabotage, because many of these products are in production for many months, and because average intelligence and very little coaching would enable anyone to render them dangerous without the Company's knowledge. On the other hand, destruction or damage by unannounced and sudden stoppages of the equipment is said to be "routine sabotage that you discover almost overnight." It is conceded that the plant was no more "prone to sabotage" when Doris Walker was discharged than it was when she was hired.

During World War II if an employee was deemed a "bad security risk", some agency of the government would request his or her discharge, but no one at this plant was ever so discharged. Nor does it appear that since World War II the Company has been under any contract obligation to any agency of the government to discharge employees who are "bad security risks". Nor did any government agency recommend the discharge of Doris Walker.

4. The Union.

The Union that signed the collective bargaining agreement dated July 23 1948 was the Bio-Lab Union of Local 225, United Office and Professional Workers of America C.I.O. It was recognized February 24 1944 by the Company pursuant to a National Labor Relations Board election. It is a Union generally denominated as "left-wing"; and [fol. 21] it along with the U.O.P.W.A. was expelled from the C.I.O. March 1 1950.

The Local is an amalgamated local consisting of about 1200 members, 400 to 500 of which are employed at Cutter Laboratories. The Union Constitution of the U.O.P.W.A. is before us; and it indicates that local officers are elected at meetings upon notice by secret ballot. The average attendance at such meetings is said to be 80 or 90 members.

In April of 1947 Doris Walker was elected Shop Chairman at the plant and also a member of the Executive Board of Local 225. In November of 1947 she was a delegate from Local 225 at the State C.I.O. Convention where she was elected a member of the State C.I.O. Executive Board. She also held some office in the regional U.O.P.W.A. coun-

cil; and in the latter part of 1948 she was elected Chief Shop Steward at the plant. Both of these Steward positions primarily entailed representing the Union in grievances arising under the agreement; and these duties took her to all departments in the plant except the executive and administrative departments. By understanding, her time for this purpose was limited to 45 minutes per day. In the spring of 1949 she was elected President of Local 225.

The term of office of Doris Walker as President of Local 225 expired December 15 1949 and a new President was elected. The next day the new officers including the new President filed the affidavits required by Sections 9 (f) (g) (h) of the Labor-Management Relations Act of 1947 and [fol. 21a] thus first qualified the Union for the services of the National Labor Relations Board under that Act.

5. The collective bargaining history.

August 7 1944 a wage dispute and 10 other disputed issues were submitted to the National War Labor Board. May 8 1945 the Tenth Regional War Labor Board approved a panel recommendation from which on June 18 1945 the Company appealed. Early in October 1945 there was a 20 minute stop-work meeting of some, but not all, of the employees against the refusal of the Company to make the Regional War Labor Board order effective. October 15 1945 an "interim wage scale" was by mutual agreement put into effect retroactive to April 30 1945. December 4 1945 the National War Labor Board made its directive order; and May 22, 1946 the first complete contract between the parties was executed with a 10% raise over the interim wage scale.

January 20, 1947 the wage provisions of the agreement were opened and a 10¢ hourly wage increase was agreed upon by the parties.

June 18, 1947 the Union served notice of intention to amend the agreement and the same day filed with the National Labor Relations Board an unfair labor practice charge against the company. Doris Walker had been elected Shop Chairman in April 1947 and during that month she and another official of the Local had been the subjects of investigations into past employment, character and Com-

[fol. 22] munist affiliation. The investigations became soon known to them from neighbors who had been interviewed. These investigations were the basis of the unfair labor practice charge. The negotiations culminated in a strike which lasted from August 10 to 17, 1947. With the intervention of Harry Bridges, the strike was settled on August 18, 1947, as a result of negotiation with him, by a 10¢ wage increase, classification adjustments and other contract changes.

June 9, 1949 the agreement was again opened; and November 30, 1949 a two-year contract effective October 1, 1949 was agreed upon, with a wage increase of 5¢ per hour effective April 1, 1950 and an additional 2-1/2¢ per hour effective October 1, 1950 and other contract changes. This was the contract negotiation during which Doris Walker was discharged.

While there is a work stoppage and a strike in this collective bargaining history, both were directed at wage and contract issues. There is no evidence of any work stoppage, strike or other interference with production the avowed objective of which was political, philosophical, subversive or revolutionary.

6. The 1949 contract negotiations.

The negotiations were opened June 9, 1949 by the Union with a demand for a 20¢ per hour wage increase. The agreement was not open otherwise than for wages. There ensued meetings between the Company and the Union during [fol. 23] June, July, August, September, and October, about the nature of which the testimony is in conflict. It is clear that some of these meetings, particularly those in August, were called to discuss grievances and not wages; but it is also clear that the wage issue was never abandoned by the Union. The Company steadily rejected the demand for a wage increase and at the outset offered reasons for the rejection with charts and arguments, to which the Union responded with a like presentation coupled finally with an indication of a willingness to compromise the 20¢ demand, subject perhaps to some delay contingent upon a C.I.O. warehousemen's wage negotiation (which was settled October 3, 1949). Some time in the early part of Septem-

her, government conciliation services were called into play, apparently without avail through September.

October 2, 1949 Sidney Roger made a radio broadcast on behalf of the Union position in the negotiation. What the content of the broadcast was does not appear; but it is undisputed that the Executive Vice President of the Company was incensed by it and considered it as "dragging the name of the Company through the mud in public". The Union followed the broadcast with an advertisement in three east-bay newspapers on October 5 which stated the Union's notion of what was involved in the wage dispute and solicited the public, if sympathetic with the Union position, to call the Executive Vice President of the Company by telephone, giving his office telephone number.

[fol. 24] October 5 three representatives of the Union including Doris Walker and three representatives of the Company including the Executive Vice President met to discuss a grievance unrelated to this case. The attorney for the Company was also present which was unusual at a grievance meeting. The Executive Vice President was still angry over the broadcast and asked Doris Walker and the Business Agent of the Union who was responsible for the broadcast, observing that he thought no employee of the Company could be responsible, for, as he said, "it is a dirty bird that fouls its own nest". The Business Agent responded that the Union was responsible for the broadcast.

The next day October 6, 1949 Doris Walker was discharged and there was read to her the written statement of the reasons for her discharge quoted above. Shortly thereafter this written statement was read to the employees of the plant at a meeting called by the Company. Although the Executive Vice President testifies that no one was authorized to make any additional statement, it does appear that statements were made at this meeting by officials of the Company, either to the entire group or in private discussion afterward, advising employees "to get out of that left-wing union" and telling them that "nothing but a left-wing union would press for wage increases at this time".

October 10, at the first wage negotiation meeting after July or August, the Company offered the Union a two-[fol. 25] year agreement, without any wage increase, as a

demonstration, it was said by the Company, that there was no feeling or animus against the Union and that the discharge of Doris Walker had nothing to do with the Company's attitude toward the Union. The Company asked whether the Union intended to make the discharge of Doris Walker a part of the negotiations; and the Union negotiators replied that they had filed a grievance and would pursue the discharge through the grievance channels.

November 30, 1949 a two-year contract effective October 1, 1949 was agreed upon with the wage increase described above. Contemporaneously with the execution of the agreement an Addendum was executed, by the terms of which the Company agreed, pending the holding of a union-shop election, to join the Union in urging all eligible employees and all newly-hired eligible employees to become and remain members in good standing of the Union. This the Company did. It is said by the Union that the Addendum was executed at its behest, in order to show some outward evidence that the Company was not intending to destroy the Union.

7. The discharged employee (education, prior employment, job Performance.)

Doris Walker was born in Dallas, Texas April 29, 1919. Her maiden name was Brin and her father was born in Texas, her mother in Maryland.

She attended Dallas High Schools; University of Texas, one year; University of California of Los Angeles (B. A. [fol. 26] with honors in English); University of California Law School (L.L.B.). She was elected to Phi Beta Kappa and to the editorial board of the California Law Review.

Before her employment by the Company, she was employed: as an enforcement attorney with the Federal Office of Price Administration in San Francisco (1942-1944); as an attorney with the firm of Gladstein Grossman Sawyer & Edises in San Francisco (1944-1946); as a cannery worker sorting and trimming vegetables in 3 canneries in Oakland and Berkeley (total employment less than 2 months in 1946); and as an organizer for the Food Tobacco & Agricultural Workers Union until the National Labor Relations Board Cannery elections in September 1946.

She says she went to law school "because I was interested in becoming a labor lawyer". She left the law firm in San Francisco because, she says, "my time was spent on routine civil matters—divorces, adoptions, personal injury cases and the like—and I became dissatisfied with my work and felt that I would rather take a more active role in the field in which I was interested and so I quit in order to take a job in a plant".

The Company maintains that she took employment with them as a member of the Communist Party, evaluating her action solely from the point of view of the welfare of the working class and the strengthening of the Communist Party.

Her first job with the Company was as Label Clerk [fol. 27] in the Production Planning Department. She worked at a desk opposite her supervisor in a room with 15 or 20 desks close together. Copy for labels for cartons and direction sheets were prepared in another department and sent to her whereupon she prepared an order to the print shop on the premises. When the printing was set, she read proof, attached an approval sheet and circulated it to 5 or 6 other people for their approval before final printing. She was also responsible for keeping a file of all these labels and directions.

Her next job (April 1949) was as Clerk Typist in the Purchasing Department. She worked at a desk in the same room with her supervisor. There she received purchase requisitions which she typed on purchase orders which were signed by the Purchasing Agent whereupon she would mail out copies to the vendor and to others in various departments of the Company. She also did general typing for the department.

A specimen Company Personnel Rating Sheet dated August 16 1949 shows her "below average" only for strength and health ("absent quite often"); she is "average" and mostly "above average", in all other respects, such as Friendliness, Cheerfulness, Satisfaction in Job, Dexterity, Fast or Slow Worker, Quick to Learn, Initiative, Energy, Promptness, Unnecessarily Talkative ("seldom talks"), Waste of Time ("wastes very little time"), Promptness ("work always finished on time"),

Conscientious ("generally dependable and conscientious") etc.

She has been twice married—to Marasse in December [fol. 28] 1939 and to Walker in September 1946—and she appears always to have used her correct legal name. She has never been arrested or convicted of crime. It is a fair statement from this record to say that, during the entire three year period of this employment, her conduct and her performance on the job have been consistently satisfactory to the Company.

8. The Application for Employment.

The Application for Employment dated October 4, 1946, was filled out under the name "Doris Brin Walker" on a printed form supplied by the Company which carries her photograph.

Under the heading "Education" she concealed her attendance at law school, her law degree and her admission to practice law by the State Bar.

Under the heading "Previous Employment" she concealed her entire previous employment record and showed a false employment as file-clerk for 6 or 8 months in 1939 by "John Tripp Att'y" (a fictitious name). She gave two references, a dentist and a lawyer in San Francisco, but she called both of them and told them of the omissions and falsifications in the application with the result that their letters of recommendation, when solicited by the Company the same month, did not reveal the subterfuge.

Doris Walker admits that she made the omissions and falsifications intentionally for the purpose of deceiving the Company because it was her information and her belief that if she answered the questions truthfully the Company would [fol. 29] not employ her. It appears without contradiction that not later than the summer of 1947 Company officials let Doris Walker know what they had learned from the 1947 investigative report; and it further appears that she had learned from those interviewed that the investigation was directed at Communist Party affiliation.

In all other respects the application was true and correct. The application did not contain any question touching the

subject of Communist Party membership or any question about any affiliation or belief; and no Company Application for Employment ever did contain any such questions until June 1949 when a new form was put into use asking about religion and also about membership in the Communist Party or "any connection with organizations listed by the United States Department of Justice as a Communist 'front'."

9. The Company's evidence of Communist Party Membership and Affiliation.

Three officials of the Company met with its attorneys after the grievance meeting on October 5, 1949, and remained in session until midnight considering evidence which the attorneys had marshalled as follows:

a. The records of the State Bar showed that no lawyer by the name of "John Tripp" had ever been licensed to practice law in California; but these records did show that a man whose given names were "John Tripp" had been admitted to practice July 7, 1942 and it was developed [fol. 30] otherwise that he was Doris Walker's supervisor in the O.P.A. (1942-1944). These records also showed that Doris Brin Marasse was admitted to practice December 8, 1942, and that February 28, 1947, she gave notice of change of name to Doris Brin Walker.

b. A transcript of the record of hearings before the National Labor Relations Board September 30 and October 1, 1948, showed proceedings by discharged cannery workers, including Doris Walker, for reinstatement with back pay and also the refusal by Doris Walker to answer the question "are you or were you ever a member of the Communist Party?";

c. Reports of the Joint Fact Finding Committee on Un-American Activities in California for the years 1943, 1945, 1947, 1948 and 1949 published by the California Legislature contained the following: the 1947 and 1948 Reports mentioned her supervisor in the O.P.A. and detailed his association with persons said to be "members of the Communist Party organization"; the 1948 Report stated that "attorneys for the Communist Party are Gladstein, Anderson, Resner, Edises, and Sawyer"; the 1949 Report notes

one of the persons whom Doris Walker gave as a reference in her application for employment as an instructor in the California Labor School offering a course listed as an "analysis of capitalist economy for advanced students" and called "The Soviets—Fact and Myth. Everyday Life in the Soviet Union. How the Soviets look at the World"; the 1945 report stated the identity of the Communist Political Association with the Communist Party despite a [fol. 31] change of name "for strategic reasons May 20-23 1944"; the 1943 Report contained a biography of Archie Brown, an admitted member of the Communist Party and a candidate for various public offices on that ticket, which mentions sponsors of his from various unions including the U.O.P.W.A.; the 1949 Report quoted the 1941 and 1944 Reports as stating that the "People's Daily World", a newspaper, is "the official organ of the Communist Party on the west coast."

d. The "People's Daily World" contained the following information: The February 14, 1944, issue under a heading "Meet the People" noted that Doris Manasse "former leader of C.I.O. United Federal Workers is switching jobs she will soon grace the office of outstanding Labor Attorneys Gladstein, Grossman, Margolis & Sawyer"; the May 11, 1948, issue contained a letter to the editor signed "Dobby Walker, Oakland" complaining about male chauvinism in the description of a woman lawyer; the June 14, 1944, issue listed Doris Walker's attorney as an alternate delegate to a State Committee of a "newly formed California State organization of the Communist Political Association"; the October 31, 1946, issue noted a radio program conducted by Doris Walker's attorney on behalf of a "citizen's Committee for Archie Brown for Governor . . . the Communist write-in candidate".

e. A photostatic copy of an unaddressed handwritten letter dated "7/10/46" and signed "Doris Brin" discussed the propriety of the introduction of a resolution on the [fol. 32] maritime strike at the Cannery Workers Club by the writer and another, indicated perturbation and finally a conclusion that the introduction of "such a resolution into my Club did not meet my tests and was wrong", and stated that "I tried to evaluate my action, as I try to

evaluate whatever I do, from the point of view of the welfare of the working class and the strengthening of the Party".

f. The unidentified undated documents contained biographical material about Doris Walker which stated among other things that "Doris Brin Marasse (nickname 'Dobby') "was issued 1945 Communist Party membership card #40360"; that she joined the Communist Party in June 1942 and had held various positions in various clubs and sections of the Party including the "Cannery Club"; that her present husband was a Communist Party member and organizer; and that in February, 1946 she listed the following information among other things on a Communist Party interview form; "she gave up law practice because it was frustrating to work with people she had to work with (namely, professional people)."

When she was discharged, Doris Walker was not confronted with any of this evidence, but she was confronted with it at this hearing. She was asked on cross-examination, "Are you now or have you ever been a member of the Communist Party?" to which her attorney objected upon the ground that the political affiliations of an employee are immaterial; that, as a matter of public policy, an employer [fol. 33] has no right to inquire into the political affiliations of an employee; that by continuing to employ her after becoming convinced within 6 months after her hiring that she was a Communist, the Company waived this issue as a ground for discharge; that this Board is not the proper tribunal to try the question whether she is a Communist; that, even if she were a Communist, this fact would not constitute just cause for discharge; and that, without conceding that she is or was a Communist and without conceding that the Communist issue was the real motive for the discharge, it could stand admitted, for the purposes of decision, that the Company believed in good faith upon the basis of evidence that she was a Communist.

The attorney for the Company declined to accept such an admission upon the ground that "a party cannot, by making concessions and admissions, preclude the other party from pursuing his examination for the purpose of bringing out before the tribunal and laying on the table, so to speak, the evidence in all its gory details" and upon the further ground that all of the evidence on the Com-

munist issue would "go to the question of the extent and the aggravation of the misrepresentations in the application for employment".

Upon consultation, Mr. Heide dissenting, we overruled the Union's objection because sustaining it involved making a ruling upon ultimate questions in the case, because rules of evidence are not customarily applied in arbitration proceedings as they are in legal proceedings, and because a [fol. 34] broad evidentiary exclusion such as this might leave a participant in an arbitration proceeding with a conviction that he had not been fully and fairly heard.

We coupled the ruling with the statement that we would not instruct the witness to answer the question, if she did not care to do so, but that if she refused to answer we would draw all justifiable inferences from the refusal. It is our understanding of the California law that a witness in an arbitration proceeding may be put under compulsion by a court order to answer material questions if so instructed by the arbitrators. This Board unanimously agreed that it was our duty as arbitrators to conclude the hearing, if possible, without the interruption and delay of proceedings in court.

Doris Walker declined to answer the question as "an absolutely unwarranted invasion into my private beliefs". She likewise declined to answer a long series of collateral questions relating to clubs, sections and offices in the Communist Party; persons mentioned in the Legislative Reports; the documentary evidence of the Company on the Communist issue including the letter of 7/10/46 signed "Doris Brin"; and so on.

In view of her refusals to answer these questions and our announced intention not to put witnesses under legal compulsion, the Company manifested a like reluctance to disclose the source of much of its evidence on the Communist issue and was accorded a corresponding immunity [fol. 35] from cross-examination with a like caution about inferences.

With the record in this posture, we invited, and the record contains, motions to protect their legal positions from both parties. We took these motions under submission with the assurance that we would call the parties in for

further hearing and put witnesses under compulsion, if upon final consideration we should conclude that anyone had been denied a fair hearing.

10. The Company's knowledge.

The Company says that it has always considered the Union to be Communist-dominated, has constantly feared "potential sabotage" since the late 1930s, and has always maintained a policy of not hiring Communists and of keeping an eye on fellow travelers for future references. On the other hand, the Company application for employment never contained any questions on this subject until June 1949 and then, existing employees were not queried.

The investigation of Doris Walker in 1947 was specifically directed at Communist affiliation; and it is admitted by the Company that the report indicated that she was a Communist. The testimony of the three executives of the Company responsible for personnel, taken together, shows an affirmative belief 6 months after she was employed that Doris Walker was a Communist. Moreover, it is admitted by the Company that the 1947 report disclosed all of the omissions and falsifications in the Application for Employment except the cannery employment and the fictitious employer; and there is circumstantial evidence tending to show that these two facts were also known then.

The State Bar records now produced here would have shown that the lawyer-employer was fictitious; and the dates of this employment shown on the Application for Employment were inconsistent with the school record disclosed by the 1947 investigative report.

Part of the duties of one of the officials of the Company was to scan a newspaper, the "Labor Herald" to which the Company was a regular subscriber commencing in June 1948. September 24, 1948 a secretary at Cutter Laboratories telephoned the "Labor Herald" to make sure that, by proper addressing, the newspaper would reach the desk of the Company official in charge of personnel. Both the October 1948 edition (page 3) and the August 23, 1949 edition (page 6) of the "Labor Herald" carried articles about the cannery hearings before the National Labor Relations Board and Doris Walker's refusal to answer questions

touching her Communist Party membership. Both articles carried half-page headlines at the top of the page and the 1948 article carried the name "Doris" in the headline.

The Company officials claim that it was the August 23, 1949 article in the "Labor Herald" that touched off the 1949 investigation of Doris Walker, but they deny ever having seen the October 19, 1948 article.

Doris Walker was subpoenaed to attend these cannery [fol. 37] hearings on September 30 and October 1, 1948. Her supervisor admits that she told him she was subpoenaed "to appear before a labor hearing". But he says he inquired no further and, although leaves of absence for Union business were customarily cleared by letter from the personnel department, he could find no such letter in the files.

While the Company says that the 1947 investigative report did not show Doris Walker's cannery employment, it is admitted that it did show she had been a C.I.O organizer and the record does not show the performance of organizing activities by her anywhere except at the canneries.

Finally, while the man on the street may have been unaware of the details of these cannery hearings, it is difficult to see how an affair of such magnitude could have gone on in the same community and yet have escaped the notice of the entire personnel department at Cutter Laboratories.

All of this circumstantial evidence taken together makes out a strong case that the Company knew about the cannery affair in 1948. From it we have no hesitation over finding at least a general indifference on the part of the Company about Doris Walker's activities until the autumn of 1949 and a specific indifference about obvious "leads" or clues to her background.

The attorneys for the Company have been the same throughout. The Company says that Doris Walker was not discharged in 1947 upon advice of counsel; that there [fol. 38] was a desire to "lean over backward" rather than to be accused of harassing Union officials and that there was not sufficient evidence on hand then "to make the discharge stick".

Practically all of the evidence which the attorneys marshalled in 1949 is essentially directed at a membership in

the Communist Party commencing 5 years before 1947 and at relevant associations or affiliations occurring between 1942 and 1947. While the cannery hearings before the National Labor Relations Board occurred after 1947, they occurred 11 months before the discharge; and the photostatic copy of the letter signed Doris Brin is dated one year and 9 months before April 1947.

No further investigation of Doris Walker appears to have ensued until August, 1949. The Company says that it made no further investigation until 1949, because "there seemed to be no point to do it" and because, although it was open to the Company to take the same investigative measures in 1947 that were taken in 1949, "maybe we were stupid . . . but we let it rest at that point".

The arguments of the parties:

The Union argues in substance that whether Doris Walker was or was not a Communist is irrelevant because her political beliefs are not a proper issue on the question whether she was justly discharged; that hence, for purposes of argument or decision without conceding the fact, it may be assumed that she was a Communist; that she [fol. 39] refused to answer questions on that issue upon advice of counsel; that the reasons for the refusal should be considered from the standpoint of one who is active in the labor movement and they are two-fold: *first*, the consequence of answering that question in the affirmative is economic death because more and more private employers are placing themselves in the positions of the guardians and trustees of the so-called loyalty of employees and a process is developing in this country which, if carried to its logical conclusion, would result in the elimination of the Communist issue by the method always preferred by Fascists the world over, namely by starvation and physical annihilation of all Communists, a process which history shows never ends with Communists but always goes on to liberals, trade unionists, people of minority races and colors, and finally the destruction of all culture, and *second*, the consequence of answering that question in the negative, is the risk of a prosecution for perjury based upon the fact that it is not too difficult to "frame" an active labor person,

such as, for example, Mooney or Bridges; that, while there were falsifications and omissions in Doris Walker's application for employment, they were minor in character and of a kind frequently and notoriously indulged in by employees in order to get work; that an understanding of idealistic motives and her demeanor in testifying leave no room for any sinister inference to be drawn from her leaving the practice of the law and entering the labor movement; that security was not the reason she was discharged, because, upon a belief by the Company that she was a Communist in 1947, confirmed by investigation then, she was not put under surveillance or denied access to any part of the plant and because the form of application for employment never contained any questions on the subject of Communism until June 1949; that the policing of the political doctrine and philosophy of Communism, is not within the province of private employers; that the history of the labor movement indicates all too frequently that the charge of Communism is either a fabrication or a lever seized upon by employers for the purpose of interfering with, weakening or destroying trade unions and that such was the motive here; that the charge of Communism cannot be severed from her union activities because it was injected into the middle of a wage dispute and levelled at her as the accepted and acknowledged leader of the Union; that the Company was convinced that Doris Walker was a Communist early in 1947 and then had as a result of investigation ample information or ready access to all the grounds assigned or shown for her discharge in 1949; that Doris Walker never was confronted with, or afforded an opportunity to explain, any of the evidence upon which her discharge was based; that employees have the right to believe that misconduct or irregularities, which are known to the employer and not acted upon, have been forgiven; that Communists have a right to make a living, and, if their beliefs are dangerous, then the proper authorized agencies [fol. 41] of government should proceed to take action against them through the channels of due process of law, but this the government has, so far at least, not seen fit to do; that changes in the general temper of the times and public opinion between 1947 and 1949 figured in the discharge; that Communism is the guiding philosophy of at

least half of the world today and that you cannot call that which dominates and influences the thinking of nearly a billion people just a conspiracy or something that is not entitled to be dignified by being referred to as a political philosophy; and that the time must come when once again, as during World War II, we must establish a relationship of comity and friendship with that part of the world which is under Communist leadership, because the alternative is the absolute extermination of civilization and of every human being.

The Company argues in substance that the Company is not an ordinary employer but a defense plant engaged in the production of products vital to the armed services as well as the civilian community; that this case should be decided, not only in the light of the facts of industrial life, but on the facts of world events as they are now pressing upon us; that certain recent Court decisions illuminate the true significance of Communist Party affiliation and of the Communist conspiracy and its effect upon our nation (*Lawson v. United States* 176 Fed. (2d) 49; *American Communications Association v. Dohds*, 339 U.S. 382 especially [fol. 42] the concurring and dissenting opinion of Mr. Justice Jackson; *National Maritime Union v. Herzog*, 78 Fed. Supp. 146; *Inland Steel Company v. N.L.R.B.*, 170 Fed. (2d) 247; *Barsky v. U.S.*, 167 Fed. (2d) 241; *Lockheed Aircraft Corporation v. Superior Court*, 28 Cal. (2d) 483; and also the speech of Senator Warren Austin delivered before the Security Council of the United Nations on August 3, 1950); that, notwithstanding *Schneiderman v. U.S.*, 320 U.S. 118 these authorities show a conviction widely held that membership in the Communist Party includes an obligation to commit acts of sabotage and destruction; that in our society, private employers operate most of the defense plants, at least in time of peace, and if they are to be foreclosed from exercising their right of discharge in a case such as this, the country is deprived of one of its important bulwarks against espionage and sabotage and traitors' conduct prior to a "hot war" as distinguished from a "cold war"; that in other societies, one could say a private employer or private person should not act until the government first acted, because there the government comes into every

phase of life, but in this country, under our philosophy, where the government steps in only after a danger has become so clear that it cannot act otherwise, a private employer may act on facts, the impact of world events as they come in the newspaper, without waiting until some statute is passed to remedy the situation; that it does not take any Federal Bureau of Investigation to run down most of the facts in this case; that the discharge in this case is [fol. 43] based, not on suspicion of Communism, but upon specific, concrete, documented evidence of actual Communist Party membership and participation and that this evidence stands uncontradicted upon the record; that membership in the Communist Party is ground for discharge; that the claim of Doris Walker that all of her actions and all of her motives are those of legitimate trade unionists is a frequent and usual technique of the left-wing Communist Party labor leaders; that the Company should not be criticized for what is claimed by the Union to be summary action on October 5, 1949, and should not have its legal rights taken away because it waited until it had corroborative documented evidence; that if the Company ever had been going to discharge Doris Walker for Union activities, it would have done so during the strike in August of 1947 when Harry Bridges was brought into the negotiation; that there was no critical labor situation in 1949 because the contract was eventually signed without any strike or even a formal request by the Union officials for a strike vote; that by reason of the failure of Doris Walker to answer questions put to her at this hearing by the Company on the Communist issue and by reason of this arbitration Board's refusal to instruct her to do so, the Company has been deprived of the opportunity to present the full implications which Communist membership justifies an employer in assuming to be true; and that the Company's position is that the evidence in this case demonstrates beyond question that Doris Walker is, not merely a conspirator, but a traitor and an enemy of her country.

First. Most people hold decided opinions about some of the questions that have been raised in the presentation of this case. This fact has been reflected both in the proof

offered and in the arguments, which pose many issues of general public importance that seem to us to go beyond the scope of our legitimate authority or responsibility to decide.

This is not a forum for the determination of the survival of world culture or for the vindication of Doris Walker's personal beliefs or her constitutional rights. Both the grievance and the authority of this Board rise only from the collective bargaining agreement and the grievance is a contract grievance. Moreover, it is the Union's grievance, as much if not more than hers, for the commitments about discharges are made to the Union, for its own protection, as well as a matter of concern to every employee covered by the agreement; and the Union is here pressing the grievance.

Nor is this a forum for the delineation of the Company's public responsibilities as an adjunct to the national defense in time of war. Doris Walker was hired and employed for three years during a "cold war", but she was discharged long before hostilities broke out in Korea. If war with Russia lies ahead, our government will no doubt take the necessary precautionary measures against sabotage and other menaces to the public safety, as it has done during [fol. 45] prior wars and as Congress now gives indication of doing. But it does not appear that the government has meanwhile delegated this function to the Company or to any of the multitude of other private enterprises that can qualify as adjuncts to the national defense.

If the Company's argument is meant to imply that, as bulwarks of national defense in anticipation of war, private employers have a right of discharge that goes beyond or in derogation of their collective bargaining commitments, as a board of arbitration we cannot agree.

It has been our attempt to approach and view this case from the standpoint of what we consider the immediate and ultimate issues to be: was this discharge "just" in the sense that it was based upon grounds reasonably related to the employee's competence, performance and general suitability in the job; was the discharge based upon a motive by the Company to "interfere with, restrain or coerce an employee because of membership or lawful activity in the Union"?

Second. The Company maintains that the basis for the discharge was two-fold: the omissions and falsifications in the Application for Employment and membership in the Communist Party with the full implications of dedication to sabotage, force, violence and the like, which Party membership is believed to entail.

That the Company honestly believed all of these things [fol. 46] is admitted and the accuracy of those beliefs is established in the record, as follows: by admission with respect to the omissions and falsifications in the Application for Employment; by undenied and uncontradicted evidence with respect to the membership in the Communist Party; and by uncontradicted evidence that the Company's beliefs about the full implications of Party membership were prevalently understood and shared.

In this view of the record, and we take this view, we are unable to find that the Company has been denied a fair hearing by reason of our refusal to instruct Doris Walker to answer the questions put to her touching this issue. Assuming that her answers would have been favorable to the Company's position, they would serve no more than to corroborate what we find is already established by the record; and the Company offers no convincing reason why further corroboration is necessary. The Company's motions are accordingly denied.

While an employer may have sufficient grounds for a discharge, this collective bargaining agreement presents additional questions: whether in the circumstances the employer may "justly" act on grounds for discharge which he once had but long failed to exercise; and whether the grounds which he asserts are the real motive for the discharge. Evidence that raises both of these questions stands in this record.

Third. It is a familiar principle of law, industrial relations and common sense that the existence of a right may [fol. 47] be doubted or lost by reason of an unjustifiable failure to assert it.

It is admitted that Doris Walker's conduct and the quality of her work were no different in 1949 from what they were in 1947. It is uncontradicted on the record that all of the essential facts upon which the discharge was based were

in existence in 1947 and some years before. And finally it is established to our satisfaction, by admissions of the Company and by proof, that the reasons assigned in 1949 by the Company for the discharge were both known and believed by the Company in 1947.

This state of the record raises a doubt that the Company ever took the assigned grounds for discharge seriously. The Company puts forward two answers:

First, the Company says that Doris Walker was not discharged in 1947 because, "if the person is in the Union they get more breaks in our place than if they are not members of the Union, if they are active". If this was an adequate reason for not discharging her in 1947, it was no less adequate in 1949, for by then Doris Walker had 3 years tenure and was more active than ever in Union affairs.

Second, the Company says that Doris Walker was not discharged in 1947 upon advice of counsel that the discharge would not "stick".

It appears that the advice was, not that the grounds for discharge were insufficient, but that, while there was belief or suspicion, there was not sufficient evidence of Communist membership or affiliation.

It further appears, by the evidence which the Company now produces, that all of the evidence touching this issue relates to Communist dogma and practices that have been common knowledge for at least eleven if not thirty years or more, and to specific affiliations, events and occurrences between 1942 and 1947, except Doris Walker's refusal to testify about Communist Party membership before the National Labor Relations Board on September 30, 1948.

Of course it is true that satisfactory evidence, or perhaps any evidence, of this kind is difficult to secure; but what is before us was secured in 1949 and there is no showing that it was unavailable to the Company in 1947 or even that it was more difficult to secure in 1947 than in 1949.

Finally, it appears, by admissions of the Company, that notwithstanding the 1947 investigative report, there was no further investigation until the autumn of 1949. This is inexplicable to us if there was real concern about the combination of Communist Party membership and the

omissions and falsifications disclosed by the 1947 investigative report.

From all of this we are unable to find any satisfactory excuse for the Company's delay of over two years in asserting the grounds for discharge presented here. Contract relationships lose effectiveness if grievances about performance are not promptly discussed, settled or brought [fol. 49] to an issue. This cuts both ways: unadjusted dissatisfactions of either employer or employees cumulate and exaggerate the importance of ensuing minor dissatisfactions. It seems to us that a commonplace of any "just" system of discipline is the swift imposition of the penalty upon the heels of discovery of the offense. Under an agreement like this one, an employer should not be entitled to carry mutually known grounds for discharge in his hip pocket indefinitely for future convenient use.

In view of the foregoing considerations, we find that the grounds asserted by the Company for the discharge were stale.

Fourth. If we doubt that the reasons assigned by the Company were the real motive for the discharge, and what we have just found raises the doubt, there remains to consider whether some other motive is established by the evidence.

The discharge of a top Union official and negotiator at a passionate climax in the middle of a stubbornly contested wage negotiation, standing alone, raises an inference that the discharge is retaliatory in nature and designed to restrain, coerce or interfere with the employee because of lawful Union activity. And we find convincing circumstantial evidence to support this inference.

Two things that had lain fallow appear to have come to life when the Union opened the agreement for wage adjustment in June of 1949. The Company then put into use a new form of Application for Employment which for the [fol. 50] first time asked questions about religion and Communist affiliation. Then also, for the first time in over two years, the Company ordered a fresh investigation into Doris Walker's Communist affiliations.

The discharge took place in a wave of heat over a radio broadcast and a newspaper advertisement; neither of which

was complimentary. But they do not appear to have made any original contribution to the usual exchanges that go on during most wage negotiations.

While the quality of Doris Walker's conduct and performance on the job had remained unchanged for three years, her position of importance in the Union had progressively increased. It was only a few months before the wage negotiation opened that she was elected President of the Local; and she was a member of the Union negotiating committee.

Of course it is common knowledge that any employer who discharges a Union official will likely be met with a charge of discrimination. But Union officials are no more immune from discharge than anyone else. Indeed, Union officials may owe a higher standard of conduct than other employees; and arbitrators have so held (*International Harvester Co.*, 14 L.A. 986 (1950); *Bethlehem Steel Corp.*, 6 L.A. 617 (1947)). Union officials have been discharged and the discharges have "stuck", when there has been evidence to justify it.

In view of all of the foregoing considerations, we find [fols. 51-52] that Doris Walker was unjustly discharged, that the reasons assigned by the Company for the discharge were not the real reasons and had been waived, and that the discharge interfered with, restrained and coerced an employee because of participation as an officer and negotiator on behalf of the Union in a wage negotiation.

The award is that Doris Walker was discharged by Cutter Laboratories Inc. on October 6, 1949 in violation of Article I Section 3 and Article VIII Section 1 of the collective bargaining agreement dated July 23, 1948 as amended. She is entitled to reinstatement and to back pay limited by Article VIII Section 1 to eight (8) weeks full time regular pay less any gross earnings or unemployment compensation during such period.

Dated at San Francisco, California September 16, 1950.

We concur: (S.) Hubert Wyckoff, Paul Heide.

We dissent: (S.) J. Paul St. Sure and will file a statement outlining the grounds of dissent.

[fol. 53]

EXHIBIT "C" TO PETITION

AMERICAN ARBITRATION ASSOCIATION, ADMINISTRATOR

Voluntary Labor Arbitration Tribunal

In the Matter of the Arbitration between BIO-LAB UNION
No. 225 and CUTTER LABORATORIES

Selection of Arbitrator (s) from List submitted to the
Parties

To: Bertram Edises, Edises & Treuhaft, 1440 Broadway,
Oakland, Calif., Gardiner Johnson Esq., 111 Sutter St.,
San Francisco, Calif.

Please take notice that, pursuant to Rule IV of the Voluntary Labor Arbitration Rules, the following list of persons selected from the Panels of Arbitrators, is submitted for the purpose of enabling the Parties to the Arbitration to indicate thereon their preferences for Arbitrators.

Hubert Wyckoff, Esq., Wyckoff, Gardiner, Parker & Boyle, P. O. Box 960, Watsonville, Calif.

J. H. Hoffman, Esq., Hoffman, Davis & Martin 111 Sutter Street, San Francisco, Calif.

Donovan Peters, Sherman & Peters (ESQ) Mills Tower, San Francisco, Calif.

Sam Kagel, Esq., 593 Market Street, San Francisco, Calif.

Arthur P. Allen, The John Randolph Haynes & Dora Haynes Foundation, 175 Eastwood Drive, San Francisco, Calif.

The undersigned, a Party to the above entitled Arbitration, hereby selects from the above list those persons [fols. 54-56] whose names are not crossed off, and herewith authorizes the Tribunal Clerk to appoint One Arbitrator therefrom.

Dated: March 21, 1950.

Signed Myron A. Martin, Title Regional Manager.

Notice:

1. This list is returnable to the Tribunal Clerk on or before March 31, 1950.

2. Unless this List is received by the Tribunal Clerk within the time specified, all persons named herein shall be deemed acceptable.

3. Leave as many names as possible, and indicate the order of preference.

4. If the Parties fail to agree upon any of the names, or if those named decline or are unable to act, or if for any reason the appointment cannot be made from the submitted list, the Administrator is authorized to make the appointment from other members of the Panels pursuant to Rule IV.

Exhibit "C"

[fol. 57]

[File endorsement omitted]

IN SUPERIOR COURT OF SAN FRANCISCO COUNTY

ANSWER—Filed December 8, 1950

Cutter Laboratories, Inc., a corporation, the respondent and adverse party above-named, answers the petition of petitioners on file herein and as a first defense thereto, admits, denies and avers as follows:

I

Answering paragraph I of said petition, respondent admits the allegations of said paragraph except that it denies that the members of Bio-Lab Union of Local 225 are united in the common interest of enforcing the terms of the arbitration award referred to in said petition.

II

Respondent admits the allegations of paragraphs II, III and IV of said petition, except that it denies that the copy of the award attached as Exhibit "A" to said petition is a complete copy of the Award and Decision of the Arbitra-

tors. In this connection, a copy of the duly acknowledged and verified Dissenting Opinion of J. Paul St. Sure, which [fol. 58] is a part of said Award and Decision, is attached to this answer, marked Exhibit 1 and by this reference made a part hereof.

III

Answering paragraph V of said petition, respondent admits the allegations of said paragraph except that respondent denies that the arbitration award referred to in said paragraph was not procured by fraud and that said award was not procured by undue means. In this connection, respondent avers as follows:

(a) Said award was procured by fraud in that claimant Doris Walker wilfully, wrongfully and without justification withheld and concealed from the arbitrators evidence pertinent and material to the controversy submitted to arbitration, namely, the answers to pertinent and material questions directed to said claimant concerning her membership in and activity on behalf of the Communist Party.

(b) Said award was procured by undue means in that claimant Doris Walker wilfully, wrongfully and without justification withheld and concealed from the arbitrators evidence pertinent and material to the controversy submitted to arbitration, namely, the answers to pertinent and material questions directed to said claimant concerning her membership in and activity on behalf of the Communist Party.

(c) Said award was procured by undue means in that it appears upon the face of the award that it is based upon errors of law.

[fol. 59] (d) The arbitrators who made said award were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy submitted to arbitration, namely, the answer to pertinent and material questions directed to claimant Doris Walker concerning said claimant's membership in and activity on behalf of the Communist Party.

(e) The arbitrators who made said award were guilty of misconduct in that they denied respondent a fair hearing by refusing to instruct claimant Doris Walker to answer questions regarding her Communist Party membership and

activities, which said questions were pertinent and material to the controversy.

(f) The arbitrators who made said award exceeded their powers in that said award is against public policy and is illegal and void.

(g) The misconduct of the arbitrators hereinabove alleged in subparagraphs (d), (e) and (f) of this paragraph prejudiced the rights of respondent in that said misconduct prevented respondent from adducing testimony and evidence before said arbitrators which would have established beyond possibility of dispute that the discharge of the claimant was for just cause and that the reinstatement of claimant as an employee of respondent at respondent's plant at Berkeley, California, which said plant produces products vital to the defense of the United States of America in time of war, would be against public policy, illegal and void.

[fol. 60] For a Further, Separate and Second Defense to Said Petition and the Alleged Cause of Action Stated Therein, Respondent Avers as Follows:

I

Respondent is informed and believes and upon such information and belief alleges that at the time Doris Walker, the claimant referred to in said petition, was discharged by respondent, and at the time the arbitration award referred to in said petition was made, the said Doris Walker was and now is an active member of the Communist Party dedicated to said Party's program of subversion, espionage, sabotage, force and violence.

II

Said arbitration award directs respondent to reinstate the said Doris Walker as an employee in respondent's manufacturing plant at Berkeley, California. Respondent is now and at all times hereinabove mentioned was engaged in the production at said plant of vaccines, serums, anti-toxins, penicillin and other allied biological and pharmaceutical products which are vitally needed in the defense of the United States of America in time of war, and it would

be against public policy for respondent to employ an active member of the Communist Party in said plant.

III

Said arbitration award is against public policy and is illegal and void.

Wherefore, respondent prays that petitioners take nothing by their petition herein and that the court make and [fol. 61] issue its order vacating said arbitration award and giving judgment to respondent for its costs of suit incurred herein.

Gardiner, Johnson, Thomas E. Stanton, Jr., By
Thomas E. Stanton, Jr., Thomas E. Stanton, Jr.,
SAS, Attorneys for Respondent and Adverse
Party.

[fol. 62] *Duly sworn to by Fred A. Cutter, jurat omitted in printing.*

[fol. 63]

EXHIBIT 1 TO ANSWER

AMERICAN ARBITRATION ASSOCIATION, ADMINISTRATOR
Voluntary Labor Arbitration Tribunal

In the Matter of the Arbitration Between CUTTER LABORATORIES and BIO-LAB UNION OF LOCAL 225 UNITED OFFICE AND PROFESSIONAL WORKERS OF AMERICA

Acknowledgment

I, J. Paul St. Sure, having been designated in accordance with the Collective Bargaining Agreement entered into by the above named Parties, and dated July 23, 1948, as amended, and having been duly sworn, and having duly heard the proofs and allegation of the Parties, Dissent to the Award of the majority executed September 16, 1950, said Dissent being as follows: Annexed hereto and made a part hereof is the Dissent consisting of seven (7) pages.

Dated at Oakland, California, October 27, 1950.

(S.) J. Paul St. Sure.

[fol. 64] STATE OF CALIFORNIA
County of Alameda, ss.

On this 27th day of October, 1950, before me, personally appeared J. Paul St. Sure, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

Olive A. Bledsoe, Notary Public in and for the
county of Alameda, State of California.

[fol. 65] AMERICAN ARBITRATION ASSOCIATION, ADMINISTRATOR
Voluntary Labor Arbitration Tribunal

In the Matter of the Arbitration Between CUTTER LABORATORIES and BIO-LAB UNION OF LOCAL 225 UNITED OFFICE AND PROFESSIONAL WORKERS OF AMERICA

Dissenting Opinion

I do not join in the award approved by the majority of the Arbitration Board. I specifically dissent for the following reasons:

1. I believe that, by reason of the withholding of a direction that the petitioner answer questions touching upon her alleged Communist activity, the employer was deprived of a full and fair hearing.

There is an inherent unsoundness in any judicial or quasi judicial proceeding which permits a witness to determine which questions will be answered and which will not on grounds other than those prescribed by law. Certainly, after a determination that the questions are material, it is impossible to justify any refusal to direct an answer without stultifying the tribunal before which [fol. 66] the testimony is being taken. In the instant case, the refusal to direct petitioner to answer was based on a desire to attempt to "conclude the hearings, if possible, without interruption and delay of proceedings in court". (See page 20 of the Award). This ruling was tentative, and final determination was to be made at the conclusion of the hearing. At various

stages of the hearing, and at the time of the presentation of the award by the Chairman, the undersigned urged that the record was "unbalanced" and therefore unfair to the employer—unless, of course, the award was in favor of the employer, in which event the error would be harmless.

As a test of the effect of the ruling, one need only conjecture what the answers might have been if they had been given. If the petitioner had admitted Communist affiliation with "full implications", could the majority nevertheless find that the discharge was "unjust"? However, the ruling denied the employer an opportunity to elicit such an answer.

2. I believe that, in view of the refusal of petitioner to answer questions touching upon her alleged Communist activity, all inferences should be drawn against her, including the inference that her purpose in seeking and retaining employment at Cutter Laboratories was to further the interests of the Communist Party "with full implications of dedication to sabotage, force, violence and the like". (See page 32 of the Award.)

Since the refusal to direct an answer was coupled with a warning that "we would draw all justifiable inferences from the refusal" to answer, and since the majority finds that there was "undenied and uncontradicted evidence with respect to membership in the Communist Party", the "full implications" referred to in the Award must follow.

On this premise, I think it important to review in detail the evidence before this Board, which establishes the following:

Petitioner joined the Communist Party in June 1942 (Transcript p. 578). Since that date she has held the positions of "Organizer", "Assistant Organizer", "Membership Director" and "Educational Director" of various Communist Party clubs and sections (Transcript p. 578). In 1945 she attended the Cereon class of the State school of the Party (Transcript p. 579), [fol. 68] and in January, 1946, she applied for permission to attend the State school during that year (Tran-

script p. 580). On February 9, 1946, she set forth all of the foregoing facts concerning her Communist Party membership and activity on a Communist Party interview form, on which she also stated that she gave up law practice "because it was frustrating to work with people she had to work with (namely, professional people). There was little connection between them and their activities and the class struggle".

(Company Exhibit No. 23).

In July, 1946, petitioner wrote a report in longhand to the State headquarters of the Communist Party in which she sought to explain certain of her actions which had displeased her superiors (Transcript pp. 178-181, 581-585). In this remarkable document she revealed, in terms too clear for misunderstanding, her subjection to the rigid discipline of the Party. I quote the report verbatim (Company Exhibit No. 6—the underscoring is mine):

"7/10/46

"I made the following statement to Lloyd today and at my request that he transmit it to the State, he suggested I write it out:—

[fol. 69] "After my discussion with Lloyd and Carroll Monday morning, July 8, I gave a lot of thought to the points they raised concerning the resolution on the maritime strike introduced into the Cannery Workers Club by Elsie Smith and me. I tried to evaluate my action, as I try to evaluate whatever I do, from the point of view of the welfare of the working class and the strengthening of the Party. What had struck me particularly in the discussion were Carroll's points as to the limited nature of our information (the daily papers, including the P.W.) and the irresponsibility implied by introducing a resolution based on such limited information. "I feel that had I not been so much on the defensive during the discussion, I would have admitted my error at that time. As it was, I spent two days (and much of two nights) thinking through what I had done, and came to the conclusion that to

have introduced such a resolution into my Club did not meet my tests and was wrong. *As a member of a club remote from the maritime situation and with no special information, to have introduced the resolution was irresponsible.*

"I want to make it clear that I had reached this position independently, before I talked to Elsie Smith yesterday. After I told her how my thinking was going, she told me that she agreed in substance and had already told the County so.

Doris Brin."

Petitioner refused to answer any questions concerning this report, refusing even to say whether or not the signature to the report was hers (Transcript p. 169). The hand in which the entire report and its signature was written, however, is so clearly identical with the hand which filled in petitioner's application for employment with Cutter Laboratories (Union Exhibit No. 1)—which is admittedly the hand of petitioner—that there can be no question but that petitioner wrote the report.

Three months after submitting this report petitioner applied to Cutter Laboratories for employment. A lawyer with prior experience with the O. P. A. and Gladstein, Grossman, Sawyer & Edises, she sought a job as a label clerk at a salary of \$160 per month (Transcript p. 38). She deliberately, and with calculated disregard of truth and common honesty, concealed vital facts concerning her education and prior employment, and invented a fictitious employer and a false job experience (Transcript pp. 31-36). When required to give references, Petitioner named two persons, Dr. William R. Berke, a dentist, and Francis McTernan, a lawyer, whose responses were bound to receive special credit because of their professional capacity (Transcript pp. 33-34). She then telephoned each of them, advising that she had given his name as a reference and (certainly in the case of Mr. McTernan and possibly in the case of Dr. Berke) that she had concealed important facts about herself in her application for employment (Transcript pp. 118-

119, 225-228). Each of these references responded to inquiries from the Company by communications which scrupulously avoided any comment that would disclose petitioner's falsifications and which praised her qualities, including her honesty (Company Exhibits Nos. 2 and 3). Mr. Francis McTernan wrote:

"I know her well enough to state, without reservations, that she is scrupulously honest in all her dealings."

[fol. 72] This studied disregard for truth and normal standards of honesty by three professional persons, two of them lawyers, cannot be explained, as petitioner has sought to explain it, as an innocent effort to provide her with a job in order that she might eat (Transcript pp. 28, 119). Such falsehoods, if discovered, would most certainly injure the professional reputations of the participants, and might even lead to disciplinary action involving their licenses. Professional persons do not lightly assume such risks. The clear inference is that much higher stakes were involved than the desire of petitioner to earn a livelihood.

Francis McTernan is the brother of John Tripp McTernan, with whom petitioner was closely associated while employed by the O. P. A. and whose first and middle names made up the fictitious employer, "John Tripp", referred to in petitioner's application for employment at Cutter Laboratories. Petitioner herself admitted that she used Mr. McTernan's two given names in concocting the fictitious name on the employment application (Transcript p. 33): John Tripp McTernan is listed in the Fourth Report of the [fol. 73] Joint Fact-Finding Committee of the California Legislature on UnAmerican Activities in California as having entertained members of the Communist Party and prominent Soviet leaders in his home (Company Exhibit No. 13). Dr. William R. Berke is listed in a schedule of classes of the California Labor School reprinted at pages 428-432 of the Fifth Report of this Committee as being instructor in a course at that school entitled "The Soviets - Fact and Myth. Everyday Life in the Soviet Union. How the Soviets Look at the World."

While these circumstances of association might have little significance standing alone, their combination with the admitted facts that both Mr. Francis McTernan and Dr. Berke, at considerable personal risk, cooperated and conspired with petitioner in practicing deliberate deception for the purpose of establishing petitioner as an employee in a vital defense plant leads to but one conclusion, namely, that petitioner's mission was to secure a position at the Cutter plant and in the Union with the purpose and intent of "strengthening the Party" and using her position to further the Communist Party's program of "sabotage, force, violence and the like". At the hearing petitioner was asked [fol. 74] these direct questions (Transcript pp. 601-602):

"Q. Isn't it a fact, Mrs. Walker, that the reason why you listed John Tripp as a previous employer and also why you gave Dr. William Berke as a reference and Mr. Francis McTernan, Jr., as a reference was because of the fact that you were a member of the Communist Party and that you knew that the two McTernans and Dr. Berke would cooperate with you in concealing from Cutter Laboratories the fact that you had previously been employed as an attorney with the OPA and the Gladstein firm?"

"Q. (By Mr. Johnson) And isn't it a fact that the reason why you listed those individuals and concocted this fictitious employer was because of the fact that you were a member of the Communist Party at the time and that you desired to get into the Cutter plant in order to carry on more effectively and more actively the program and the activities of the Communist Party?"

She refused to answer these questions, and other pertinent questions relating to her motives in seeking [fol. 75] employment at Cutter Laboratories, and presumably the majority have inferred, as I infer, that her answers to the questions, if given, would have had to be in the affirmative.

I cannot accept reasoning which concludes that

"staleness" can defeat an employer's right to discharge an employee having such convictions and such motives, particularly when the employer denies delay in acting. Nor can I accept reasoning which, based on inference, concludes that the employer had carried knowledge of such convictions and motives "in his hip pocket for future convenient use," and finally discharged the employee for union activity, especially when the employer categorically denied this to be case.

3. I believe that, by reason of the petitioner's refusal to answer questions touching upon her alleged Communist activity (which was asserted to be a primary reason for her discharge), petitioner, in effect, waived her right to pursue her remedy before the Board.

On purely procedural grounds, I cannot go along with an award which finds in favor of a petitioner who refuses to answer material questions relating to the subject matter of her own application for relief. The [fol. 76] argument of counsel for the petitioner and the union was that as a matter of "equity" (Transcript p. 122, 11. 19-20), the Board should not require the witness to answer. Actually, the petitioner initiated the proceeding in arbitration. She must have known that the issue of communism was involved; because she was informed that it was one of the reasons for her discharge. Having raised the issue, she submitted herself as a litigant and as a witness to secure, I assume, a full hearing. And yet, when questions relating to communism were asked, she refused to answer them, and then, through her counsel, urged that "equity" should protect her against a direction to answer.

How does such a situation differ from that of any litigant who seeks a Court determination of his rights, and while doing so refuses to testify concerning material issues essential to the development of the facts in controversy? It is my view that when petitioner refuses to answer the questions regarding communism, she, in effect, withdrew her petition before this Board.

Nor does it satisfy me that, even though this conclusion be reached, the case nevertheless remains "the

union's case". The union sought but one remedy—the [fol. 77] personal remedy of petitioner—which was reinstatement with back pay. The "cases" of petitioner and the union are the same.

4. I believe that, since the real motive of the employer is said by the majority to be a determining factor (See page 5 of the Award), the majority of the Board acted arbitrarily in inferring a wrongful motive on the part of the employer, while refusing to permit the employer to examine petitioner as to her motives.

The "lack of balance," or rather the complete unfairness, which necessarily flows from the ruling of the majority is demonstrated by the portion of the award relating to "motive". The majority finds, despite categorical denials by the employer, that the "real reasons" for discharge did not relate to communism or the false application for employment. They find, entirely by inference, that the motive for discharge was to "coerce an employee" because of union activity.

Thus it appears that the employer has been denied the right to inquire into the "motive" of the petitioner, while at the same time the majority rejects the sworn testimony of the employer who answered all questions relating to his motive.

5. I believe that, in view of the majority refusal [fol. 78] to allow an inquiry into the motives of petitioner, the finding that the "grounds asserted by the Company for discharge were stale" amounts to an attempt to excuse and avoid the effects of the failure to grant a full and fair hearing.

It is not my purpose to discuss the problem of whether this is "a forum for the delineation of the Company's public responsibilities as an adjunct to the national defense in time of war". (See page 30 of the Award). I am more concerned with the personal responsibilities of the Board, and the responsibilities of Cutter Laboratories as a private employer. The conclusion that an employer may not discharge an employee who is dedicated to "sabotage, force, violence and the like" is shocking to me. In his own self interest, I hold that an employer would have the right

to discharge such a person, and would be a fool if he did not do so.

Nor can I accept the reasoning that any "staleness", even though it be proven, can deprive an employer of such right of discharge. But "staleness" is not established by this record. Indeed, the uncontradicted testimony shows that the employer did not act on conjecture, but waited for proof (which is [fol. 79] conceded to be complete) and then acted promptly. Had the employer acted on the inconclusive information he obtained in 1947, I can well imagine the majority of this Board piously condemning "guilt by association" and similar phrases because the employer had acted "unfairly".

Certainly the argument that the employer might have continued his investigation should not be considered as denying his ultimate right to act when a later investigation developed proof. The essential fact is that proof was obtained, albeit late, and when it was obtained, the employee was discharged.

6. I believe that, on the total record, the Board's finding that discharge was discriminatory, and based on union activity, cannot be supported either by direct evidence or fair inference, quite apart from the fatal gap in the record resulting from the refusal to require petitioner to testify on material matters placed in issue by her own counsel.

It seems to me that an examination of the record must disclose that the majority resolved every issue against the employer in order to try to offset the obvious defect of the denial of a full and fair hearing. No [fol. 80] other explanation occurs to me for the findings that rest on "common knowledge" or "circumstantial evidence" in the face of positive, direct and uncontradicted evidence to the contrary. And the same kind of comment may be made concerning the apparent unwillingness of the majority to relate the proof of communism to the falsification of the application. Standing alone, the falsification might be said to be condoned. But when coupled with proof of communism in 1949, it took on new significance.

And finally, when the majority concludes that there is an affirmative showing of discrimination for union activity, resort is again made to "inference" and "circumstantial evidence".

For these reasons, among others, I dissent.

Dated: October 27, 1950.

J. Paul St. Sure.

[fol. 81] AMERICAN ARBITRATION ASSOCIATION, ADMINISTRATOR
Voluntary Labor Arbitration Tribunal

In the Matter of the Arbitration Between CUTTER LABORATORIES and BIO-LAB UNION of LOCAL 225 UNITED OFFICE AND PROFESSIONAL WORKERS OF AMERICA

Verification

STATE OF CALIFORNIA,
County of Alameda, ss:

J. Paul St. Sure, being first duly sworn, deposes and says:

That he is the arbitrator who prepared and signed the foregoing acknowledgment and statement of dissent annexed thereto; that he has read said acknowledgment and statement of dissent and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

J. Paul St. Sure.

Subscribed and sworn to before me this 27th day of October, 1950. Olive A. Bledsoe, Notary Public in and for the County of Alameda, State of California. (Seal.)

[fol. 82]

[File endorsement omitted]

IN SUPERIOR COURT OF SAN FRANCISCO COUNTY

NOTICE OF MOTION TO VACATE ARBITRATION AWARD—Filed
December 8, 1950

To Mabel Black, T. Y. Wulff, and Bio-Lab Union of Local 225, United Office and Professional Workers of America; Petitioners above-named and to Messrs. Edises and Treuhaf T., Their Attorneys:

You and each of you will please take notice that on December 20, 1950, at 2:00 o'clock P. M., or as soon thereafter as counsel may be heard, in Department 22 of the above-entitled court, located in the City Hall, San Francisco, California, the Respondent and Adverse Party above-named, Cutter Laboratories, Inc., will move said court for its order vacating that certain arbitration award referred to in the petition on file herein, a copy of which is attached as Exhibit "A" to said petition.

Said motion will be made upon each and every one of the following grounds, severally and collectively:

1. That said award is against public policy and illegal and void.
2. That the arbitrators exceeded their powers in making said award.
3. That the arbitrators were guilty of misconduct in re-[fol. 83] fusing to hear evidence pertinent and material to the controversy, whereby the rights of said respondent have been prejudiced.
4. That the arbitrators were guilty of misconduct, in that they denied said respondent a fair hearing, whereby its rights have been prejudiced.
5. That said award was procured by fraud.
6. That said award was procured by undue means.

Said motion will be based upon the following: this notice of motion; said petition; the answer of said respondent and adverse party to said petition, which is filed herewith; the dissenting opinion of J. Paul St. Sure, a

member of the Arbitration Board which made said award, Exhibit "A" to the petition, which dissenting opinion is attached as Exhibit 1 to said answer; the affidavit of Thomas E. Stanton, Jr. attached hereto; all the other papers and files in the above-entitled action; and oral and documentary evidence to be adduced at said hearing.

Dated: December 7, 1950.

Gardiner Johnson, Thomas E. Stanton, Jr., By
Thomas E. Stanton, Jr., Attorneys for Respondent
and Adverse Party.

[fol. 84] EXHIBIT TO NOTICE OF MOTION

Gardiner Johnson, Thomas E. Stanton, Jr., 111 Sutter Street, San Francisco, GARfield 1-2727, Attorneys for Respondent and Adverse Party.

Filed Dec. 8, 1950. Martin Mongan, Clerk. By R. J. Tracey, Deputy Clerk.

(Title of Court and Cause)

AFFIDAVIT OF THOMAS E. STANTON, JR.

STATE OF CALIFORNIA,

City and County of San Francisco, ss.

Thomas E. Stanton, Jr., being first duly sworn, deposes and says:

That he is one of the attorneys for Cutter Laboratories, Inc., the above-named respondent; that as such he was present at and participated in all of the hearings before the Arbitration Board which made the award attached as Exhibit "A" to the petition of the above-named petitioners on file herein; that during the course of said hearings and as a part thereof the following questions were asked, the following answers were given and the following objections and statements were made by the persons indicated:

"Q. Mrs. Walker, are you now or have you ever been a member of the Communist Party?

Mr. Edises: Just a moment. I object to that on all of the grounds previously stated; * * *

[fol. 85] The Chairman: We have come to a conclusion: that we consider the question to be material. The objection is overruled, but we want to couple the ruling with a statement of the Board: that we will not instruct the witness to answer if she does not care to answer the question, and she is at liberty to answer it or not to answer it as she chooses. If she should refuse, her refusal to answer will stand in the record and, as in any case, the failure of a party to produce evidence justifies the fact-finding board in drawing inferences from it. What inference we will draw from the refusal we have not determined now and we will let that await final determination of the case.

Do you want to answer the question?

The Witness: No, I do not, Mr. Arbifrator.

The Chairman: All right.

Mr. Edises: Do you wish to explain your reasons for refusing to answer?

The Witness: Yes. It's very simple. I consider it a question of an absolutely unwarranted invasion into my private beliefs, and I know that it is nothing but a—the whole question is nothing but a red herring to obscure the real issue in the case. * * *

Mr. Johnson: Mr. Chairman, if the witness has completed her answer, I would move that the voluntary statement with respect to her considering this whole matter to be a 'red herring' be stricken from the record. * * *

[fol. 86] The Chairman: All right. The latter portion will apply. The remark about the 'red herring' is stricken as argumentative. The balance of the answer will stand.

Now, have you anything further?

The Witness. No.

The Chairman: All right.

By Mr. Johnson:

Mrs. Walker, are you now or have you ever been a member of the Federal Workers Branch in the Professional Section of the Communist Party? * * *

Mr. Edises: The same objection.

The Chairman: The same ruling, and the same instruction to the witness: that she doesn't have to answer it if she does not care to answer the question, and she is at liberty to answer it or not to answer it as she chooses. And I presume that the witness will give the same reason [fol. 87] said 'Same answer'?

The Witness: That's correct.

By Mr. Johnson:

The next question is this: Are you now or have you ever been a member of the Professional Section of the Communist Party?

The Chairman: The same objection?

Mr. Edises: The same objection.

The Chairman: The same ruling, the same answer from the witness, the same instruction from the Board to the witness, and the same answer of the witness as to her reasons.

Mr. Johnson: Does the record show that the witness [fol. 87] said 'Same answer'?

The Witness: The same answer.

By Mr. Johnson:

Q. The next question: Are you now or have you ever been a member of the South Side Club of the Professional Section of the Communist Party?

The Chairman: The same objection?

Mr. Edises: The same objection.

The Chairman: The same answer from the witness?

The Witness: The same answer.

The Chairman: The same instruction and the same reason given.

By Mr. Johnson:

Q. Next question: Were you ever either nominated, appointed or elected to be Membership Director of the Professional Section of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling.

You can just repeat what I have said here before.

The Witness: The same answer.

Mr. Johnson: The same ruling, Mr. Chairman?

The Chairman: The same ruling.

By Mr. Johnson:

Q. Were you ever nominated, appointed or elected to be Chairman of the Labor Committee of the Professional Section of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same statement from the Chairman of the Board.

[fol. 88] The Witness: The same answer.

By Mr. Johnson:

Q. Are you now or have you ever been a member of the Sunset Club of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same statement from the Board.

The Witness: The same answer.

The Chairman: The same statement from the Board and the same ruling.

By Mr. Johnson:

Q. Were you ever nominated, appointed or elected to be Educational Director of the Sunset Club of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same answer?

The Witness: The same answer.

The Chairman: The same statement from the Board and the same ruling.

By Mr. Johnson:

Q. Are you now or have you ever been a member of either the Cannery Club or the Cannery Workers Club of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same statement and ruling from the Board.

By Mr. Johnson:

Q. Are you now or have you ever been a member of the Berkeley Section of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling and the same statement [fol. 89] from the Board.

The Witness: The same answer. * * *

By Mr. Johnson:

Q. Now, Mrs. Walker, did you ever write and sign any communications in which you referred to 'strengthening the "Party"'?

Mr. Edises: That is objected to. The same ground.

The Chairman: The same ruling. The same instruction. The same statement of the witness.

By Mr. Johnson:

Q. Isn't it true, Mrs. Walker, that you wrote and signed documents using the term 'strengthening the Party', in which you used that term as referring to the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Mrs. Walker, did you ever write and sign any documents in which you referred to the 'Cannery Workers Club'?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Is it not a fact that you wrote and signed documents in which you used the term 'Cannery Workers Club' and by such reference referred to the Cannery Workers Club of the Communist Party?

Mr. Edises: The same objection.

[fol. 90] The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Did you ever write and sign any documents in which, in referring to the Cannery Workers Club, you also used the expression 'my Club'?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Is it not a fact that you wrote and signed documents in which you used the terms 'my Club' and 'the Cannery Workers Club' and were referring to the Cannery Workers Club of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Did you ever write and sign documents in which you use the term 'the County'?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Is it not a fact that you did write and sign documents in which you used the term 'the County', with a capital C, as referring to the County Committee of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

[fol. 91] The Witness: The same answer.

By Mr. Johnson:

Q. Did you ever write and sign documents in which you use the term 'the State'?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Is it not a fact that you did write and sign documents using the term 'the State,' as referring to the State Committee of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Did you ever write and sign any documents in which, in referring to the daily press, you used the term 'P.W.'?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Isn't it a fact that you did write and sign documents using the term 'P.W.' as referring to the 'People's World', the official newspaper of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Calling your attention, Mrs. Walker, to a document which is in evidence here as Company Exhibit No. 33, [fol. 92] let me ask you this question: Did you on February 9 1946 fill out a Communist Party interview card or otherwise furnish information or make the statement that you had joined the Communist Party in June 1942?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. On that date, Mrs. Walker, did you list or write in or furnish any information on a Communist party interview card?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Mrs. Walker, is it a fact that 1945 Communist Party membership card #40360 was issued to you either under the name of Doris Brin or Doris Brin Marasse?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Mrs. Walker, is it a fact that you have held the positions of Organizer or Assistant Organizer or Membership Director or Educational Director of various Communist Party clubs and sections?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

[fol. 93] Mr. Johnson: I might state, Mr. Chairman, in support of these questions that Mr. Edises objected strenuously during Mr. Cutter's examination because of the fact that they had not asked her these questions. I am asking them now in an effort to remedy that defect, if there were one, and also to elicit what the answers would have been.

Mr. Edises: You are a little late.

The Chairman: Just a moment.

Next question, please.

By Mr. Johnson:

Q. Mrs. Walker, it is a fact that you attended the Cereon class of the State School of the Communist Party in 1945?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Mrs. Walker, is it a fact that you gave up the practice of the law because it was 'frustrating' to work with the people with whom you had to work, namely, professional people?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

Mr. Johnson: That is not relative to that issue at all.

Arbitrator St. Sure: She already answered that question once.

Arbitrator Heide: That is already in the record.
[fol. 94] Mr. Edises: Well, it is all in the evidence: the reason why she gave it up.

The Witness: That is not my statement.

The Chairman: Next question.

By Mr. Johnson:

Q. Isn't it a fact that one of the reasons you gave up the practice of the law was because there was little similarity between them, that is, the professional people with whom you had to work, and their activities and the class struggle?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Is it a fact, Mr. Walker, that on January 24, 1946 you filed an application to attend the State School of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Mrs. Walker, on January 24, 1946 did you state that you were a member of the Sunset Branch of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. I am going to call your attention to Company Exhibit No. 22.—

[fol. 95] “The Chairman: Do you think that we could shorten this a little bit? Are you going through that sentence by sentence the same way?”

Mr. Johnson: No. I will state, though, Mr. Chairman, that in my opinion, in view of the situation with which I am confronted, there is no other way that I could handle a document such as Exhibit 23. But this will be short.

By Mr. Johnson:

Q. Calling your attention to Company Exhibit No. 22, is it a fact that you were at one time a member of and an organizer for the Cannery Club of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Were you at any time a member of or an organizer for the Cannery Workers Club of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Calling your attention to Company Exhibit No. 6, is that your signature?

Mr. Edises: That is objected to on all of the previous grounds previously stated and the additional ground that it has already been asked and answered.

The Chairman: The same ruling as before.
[fol. 96]— Mr. Johnson: It is now in evidence, Mr. Chairman.

The Chairman: I understand.

Mr. Edises: The same objection.

The Witness: The same answer.

The Chairman: The same ruling.

By Mr. Johnson:

Q. Mrs. Walker, did you ever write any letter or document referring to 'Lloyd'?

Mr. Edises: Just a moment. I think that counsel should be instructed not to go through that same routine, because he has already asked those questions about No. 6, if my recollection serves me. * * *

The Chairman: I don't see that that question was asked?

Mr. Edises: Well, we will make the same—

Mr. Johnson: It was not.

Mr. Edises: —objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Mrs. Walker, did you ever write and sign any document in which you made reference to 'Carroll'?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Mrs. Walker, is it a fact that the Report of the Un-American Activities Committee of the State Legislature

for 1948, at page 215, was correct when it "stated: 'Com-[fol. 97] munist functionaries in Alameda County include Lloyd Lehmann and Carroll Barnes'?"

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Isn't it true that you wrote and signed a document on July 10, 1946 using the terms 'Lloyd' and 'Carroll,' and that in so doing you were referring to two Communist functionaries in Alameda County named Lloyd Lehmann and Carroll Barnes?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Did you ever write and sign any document referring to 'Elsie Smith'?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Isn't it a fact that you did write such a document and sign it on July 10, 1946, and that in referring to 'Elsie Smith' you were referring to a member of the Communist Party and also a member of the Cannery Workers Club of the Communist Party named Elsie Smith?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

[fol. 98] By Mr. Johnson:

Q. Mrs. Walker, on November 11, 1949 did you appear and speak at a meeting at the John Muir School in Berkeley at which Richard Gladstein, one of the six attorneys de-

fending the eleven Communist Party leaders, spoke under the auspices of the Civil Rights Congress?

Mr. Edises: Is that before or after—What was that date? November 11?

Mr. Johnson: November 11, 1949, yes.

Mr. Edises: That is objected to on the ground of irrelevancy; a matter that occurred after the date of her discharge.

Mr. Johnson: May I present my position on that, Mr. Chairman?

The Chairman: Yes.

Mr. Johnson: It is this: that this subject goes directly to the question of the state of mind and the motive of this woman. She has testified that the reasons that she made admitted concealments was because she needed a job, and other such statements. The Company on the other hand contends that in view of the facts that were discovered in 1949, approximately a month before this meeting to which I am referring, they knew and took the position and believed that she was a Communist Party Member and that her entire course of conduct had been generated and directed and motivated because of that membership and activity.

My purpose in presenting this is to show that not only [fol. 99] "at the time but continuously since this woman has participated actively in the meetings and the movements and the activities of the Communist Party; has gone to meetings where known and admitted Communists have participated actively; and in that way to develop her frame of mind and to show that she has been a member of the Communist Party.

And I submit that in the case of *United States v. Marzani*, reported in 71 Federal Supplement 615, the court there expressly held that where the United States government or any other party raises the issue of Communist Party membership, for the purpose of showing if you are entitled to go generally and unrestrictedly into the question of meetings attended, the nature of the pamphlets which are distributed, and those other questions which normally go along with Party membership.

The Chairman: But when.

Mr. Johnson: I submit, at any time. Just as they are

doing in the Bridges case, to show that a continued course of conduct indicates the state of mind of the person. And I submit that where—

The Chairman: You say 'the Bridges case.' You mean the current application to revoke bail?

Mr. Johnson: That is right.

The Chairman: I don't see that that is germane here. The ultimate issue here is whether a discharge that occurred in October of 1949 is valid or not. I am not particularly interested in anything that happened after that or what [fol. 100] anybody, "the Company or Mrs. Walker or anybody else, did after that. It seems to me that we are going to get far afield if we beat the bushes up after October 5.

I will sustain the objection on that ground.

Mr. Johnson: At this time, Mr. Chairman, we offer to prove that on November 11 1949 Mrs. Doris Walker, the Petitioner here, attended a meeting and spoke at the John Muir School in Berkeley, along with Mr. Richard Gladstein, an attorney, one of the six attorneys who defended the eleven Communist Party leaders in the trial in New York, who was speaking in behalf of his appeal from a six-months' contempt conviction; that the meeting attended by and participated in by both Mr. Gladstein and Mrs. Walker was sponsored by the Civil Rights Congress.

We offer also to submit proof as to the status and nature of the Civil Rights Congress.

In support of our offer of proof, we are prepared to present an article in the Daily People's World for November 11, 1949, third page, column 2, referring to the meeting.

By Mr. Johnson:

Q. Mrs. Walker, on July 4, 1950, at the Lakeside Park in Oakland, did you participate in circularizing among the people who were attending the patriotic celebration at that Park so-called 'peace petitions'?

Mr. Edises: That is objected to as irrelevant. It is a matter occurring after the discharge.

The Chairman: The same ruling. Sustained.

By Mr. Johnson:

Q. On that day, Mrs. Walker, did you "present such a [fol. 101] petition and request a signature from an employee of Cutter Laboratories by the name of Don Wonder?

Mr. Edises: The same objection.

The Chairman: The same ruling.

By Mr. Johnson:

Q. On that day, Mrs. Walker, isn't it true that you presented such a petition to Mr. Wonder and upon his recognizing you he stated to you 'Hello, Doris. What is the 'Party line' today?'

Mr. Edises: The same objection.

The Chairman: The same ruling. . . .

By Mr. Johnson:

Q. Mrs. Walker, I call your attention to the fact that in answer to a question by Mr. Edises about—Well, maybe you would like to look at page 23 of the transcript in this case, at the bottom of the page, line 20, and the answer.

A. (Reading portion of transcript referred to.)

Q. Mr. Edises had asked you at line 15 'What was the next job you held?' Your answer was 'I was employed as an attorney by the law firm of Gladstein, Grossman, Sawyer & Edises.' The next question: 'How long did you remain on that job?' Answer: 'Until January of 1946.'

This is the question to which I direct your attention: 'And can you state what led you to leave that job?' To which your answer was: 'Yes. I had originally gone to law school because I was interested in becoming a labor lawyer. I was interested in the labor movement. And after [fol. 102] I worked for a "labor law firm for a period of time, I found that I was not involved in labor cases as such; that my time was spent on routine civil matters, divorces, adoptions, personal-injury cases and the like; and I became dissatisfied with my work and felt that I would rather take a more active role in the field in which I was interested. And so I quit in order to take a job in a plant.'

My question is, what was the field that you were 'inter-

ested in' in which you 'felt that (you) would rather take a more active role'?

A. The organized labor movement. Did you have any other reason for leaving that job and taking a job in the field in which you were interested?

A. No.

Q. Isn't it a fact, Mrs. Walker, that the reason you left that job and the reason you took a job in the field where you could take a 'more active role' was because of the fact that you were a member of the Communist Party and you felt that by taking a plant or field job you could better carry on your activities as a member of the Communist Party?

Mr. Edises: Now, Mr. Chairman, I believe that the counsel here by somewhat devious method is attempting to get into the field that has already been barred by your ruling.

Mr. Edises: The same objection.

Mr. Edises: So I make the same objection.

[fol. 103] "The Chairman: The same ruling."

The Witness: The same answer. . . .

By Mr. Johnson:

Q. Calling your attention at page 24, line 15, Mr. Edises had asked you about your employment at the Heinz Cannery, and then he said: 'Can you state the circumstances of your layoff?' Your answer was: 'It requires going into some of the reasons why I was at H. J. Heinz in the first place.' His statement was: 'All right. Go ahead and tell me.' And your answer was, page 24, line 19: 'Well, at the time that I went to work at Heinz the CIO Cannery Workers Union, known as the Food, Tobacco and Agricultural Workers Union, was conducting an organizing drive among the canneries in Northern California, and I felt that this would be an opportunity for me to take an active role in the organized labor movement. And so I got a job there in order to help organize the CIO on the job. And after I had been there for about three weeks I began to sign up workers on the job in the CIO union, and after a few days I was observed doing so by my forelady and the following day I was laid off.'

Do you remember being asked that question and giving that answer?

A. Yes.

Q. Now, Mrs. Walker, was there any other reason why you took that job at the Heinz plant?

A. No.

Q. Isn't it a fact, Mrs. Walker, that the real reason [fol. 104] "that you took that job was because you were a member of the Communist Party at the time and that you felt and believed that by taking that job it would afford you an opportunity to take an active role in the activities and program of the Communist Party?"

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. I call your attention to page 27 of the transcript, line 23. Mr. Edises had asked you, 'what was your next job?' Your answer was: 'Cutter Laboratories in Berkeley'.

A. What page?

The Chairman: 27.

By Mr. Johnson:

Q. 27.

A. I see. I see.

Q. Then he asked you this question: 'Can you state what led you to seek employment at Cutter Laboratories?' Your answer was: 'Well, I needed a job very badly and I also knew that there was a CIO union in the plant and that Cutter Laboratories would be a place where I could be active as a trade unionist.'

Do you remember being asked that question and giving that answer?

A. Yes.

Q. Now, Mrs. Walker, was there any other reason or any [fol. 105] "other motive or was there anything else in your mind which led you to seek employment at Cutter Laboratories?"

A. No.

Q. Isn't it a fact, Mrs. Walker, that at that time you were

a member of the Communist Party and that the reason why you sought employment and filled out an application for employment at Cutter Laboratories was because you felt and believed, and had it in mind, that by obtaining that employment at that plant you could more actively and more efficiently carry on the program and the activities of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q: I call your attention to page 31 of the transcript, line 23. You will note that Mr. Edises had asked you the question: 'Is there any item with reference to your education which you omitted from that statement?' which was the Cutter Laboratories application for employment form. Your answer was: 'My law school education was omitted.'

Were you then asked this question and did you give this answer: 'Question. And will you tell the Board what led you to omit that statement?' Answer: 'Well, I felt sure that I would not be hired for any clerical job at Cutter Lab. for which I was applying if the Company knew that I had received a law school education. They would consider me in a sense over-educated for any such job and therefore wouldn't hire me.'?

[fol. 106] "Were you asked that question and did you give that answer?"

A: Yes.

Q. Now, Mrs. Walker, was there any other reason or motive, or did you have anything else in mind?

Mr. Edises: Just a moment. Who is this gentleman?

Mr. Johnson: This is the maitre d' in the hotel. He has an important question to ask.

By Mr. Johnson:

Q. Will you tell me, Mrs. Walker, whether or not there was any other reason or motive or whether you had anything else in mind in omitting that statement from the Cutter Laboratories application?

A. No.

Q. You did not have anything else in mind?

A. No.

Q. Isn't it a fact, Mrs. Walker, that the reason you omitted from that application at Cutter Laboratories the statement as to your law school education was because you were a member of the Communist Party and you felt that if you disclosed the fact that you were a member of The Bar and had graduated from law school, they would through that means track down your past history of activities as a member of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

[fol. 107] "By Mr. Johnson:

Q. I call your attention to the transcript, page 32, line 18, Mr. Edises had asked you: 'Now coming to the next section headed 'Previous Employment:', there appear the figures '1939', 'John Tripp, Att'y', 'File Clerk', 'Salary \$35', 'Reason for Leaving: Marriage'. Was that statement true or false?' Your answer: 'It was false.'

Were you then asked this question and did you give this answer: 'And will you state to the Board what led you to make that false statement on the application?' Answer: 'Well, I felt that in order to get a job I would have to show some kind of experience, and so I made up some kind of previous experience, feeling quite sure that I could handle any job that they gave me.'

Were you asked that question and did you give that answer?

A. Yes.

Q. Now, Mrs. Walker, was there any other reason or motive, or did you have anything else in mind when you made that false statement on the application at Cutter Laboratories with respect to your previous employment by a fictitious individual by the name of John Tripp?

A. No.

Q. Isn't it a fact, Mrs. Walker, that the reason why you listed John Tripp as a previous employer and also why you

gave Dr. William Berke as a reference and Mr. Francis McTernan, Jr. as a reference was because of the fact that [fol. 108] you were a member of the Communist Party and that you knew that the two McTernans and Dr. Berke would cooperate with you in concealing from Cutter Laboratories the fact that you had previously been employed as an attorney with the OPA and the Gladstein firm?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. And isn't it a fact that the reason why you listed those individuals and concocted this fictitious employer was because of the fact that you were a member of the Communist Party at the time and that you desired to get into the Cutter plant in order to carry on more effectively and more actively the program and the activities of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Calling your attention to page 34 of the transcript, line 16. I call your attention to the fact that Mr. Edises had asked you: 'Now, you did not state under the heading of 'Previous Employment:' your employment with this law firm or your employment with the canneries. Will you tell the Board why you didn't list those?' Your answer was: 'Well, I had been told by persons I knew in the CIO that Cutter Laboratories was——' I objected. Then Mr. Edises said: 'Mr. Chairman, it goes to the state of her mind, [fol. 109] "which is a matter of fact." Following which your answer was, at page 35, line 14: "—an anti-union employer; that I was confident that if I told them that I had worked for a firm of labor attorneys, such as the firm I had worked for was, or that I had been a union organizer, I would not be hired. So I didn't tell them."

Were you asked that question and did you give that answer?

A. Yes.

Q. Did you have anything else in mind or were you in any different state of mind or were there other factors or reasons or motives which were in your mind when you concealed those facts?

A. No.

Q. Isn't it a fact and a matter of fact, Mrs. Walker, that your state of mind at the time was that you were a member of the Communist Party; that you were interested in getting out into the field and taking a more active role in carrying on the field of activities in which you were interested and the activities of the Communist Party; and that it was for that reason that you misrepresented those facts?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer."

That attached to this affidavit and marked Exhibits "A", "B" and "C", respectively, are copies of the documents [fol.110] which were introduced and received as Company's Exhibits Nos. 22, 23 and 6 at the hearings before said Arbitration Board, and which are referred to as such in the foregoing questions, answers and statements; that attached to this affidavit and marked Exhibit "D" is a typewritten copy of said Company's Exhibit No. 6; that attached to this affidavit and marked Exhibit "E" is a copy of the document which was introduced and received as Company's Exhibit No. 1 at the hearings before said Arbitration Board, which document bears a signature which claimant Doris Walker, formerly Doris Brin, stated under oath before the Board was her signature; and that attached to this affidavit and marked Exhibit "F" is a copy of the application of claimant Doris Walker for employment with respondent, Union Exhibit No. 1 before said Arbitration Board, which document also bears the admitted signature of claimant Doris Walker.

Affiant further states that all of the foregoing questions directed to claimant Doris Walker were material and pertinent to the controversy submitted to said Arbitration Board, and that the refusal of claimant to answer said questions

withheld and concealed testimony and evidence material and pertinent to the controversy.

Thomas E. Stanton, Jr.

Subscribed and sworn to before me this 7th day of December, 1950. Agnes M. Cole, Notary Public in and for the City and County of San Francisco, State of California.

[fol. 111]

EXHIBIT "A" TO AFFIDAVIT

Brin, Doris

Alias: Doris Walker, Doris Marasse. Nick name: Dobbie.

Permanent address: 1406 17th Avenue, San Francisco.

Born: April 29, 1919, Dallas, Texas.

Father: Sidney Thomas Brin. Born in Texas.

Mother: Helen Franklin Brin. Born in Baltimore, Md.

Subject's former husband: Henry S. Marasse, born in Berlin.

Subject a member of the Lawyers' Guild.

President of United Federal Workers of America, a C. P. front.

Active member, United Office and Professional Workers Union, #34.

President, Voters' League, San Francisco and Bay area.

Subject's present husband is George Henry Walker. Married September 17, 1946 in Napa, California. He is C. P. member and organizer. He is former State Literary Director of the communist party and formerly president of the International Bookstore, San Francisco (C. P.) 2-26-49 Independ. Progressive Party, Alameda Co. petition circulator. George H. Walker's sister is Elsie Crane, who is presently active in the communist party. Brother, Jack Crane, was convicted of Criminal Syndicalism in California in 1934 and served time in San Quentin.

[fol. 112] Subject is presently a member and organizer for the Cannery Club of the communist party. 2-26-49 Subject was petition circulator Independent Progressive Party for Alameda County.

Company Exhibit No. 22.

[fol. 113]

EXHIBIT "B" TO AFFIDAVIT

Doris Brin Marasse

Alias: Doris Brin, Doris Marasse, Doris B. Marasse, "Dobby", "Dobbie".

Born: Dallas, Texas, April 29, 1919.

Married: Henry Felix Marasse, December 22, 1939.

Divorced: September 15, 1945.

Doris Brin Marasse was issued 1945 Communist Party membership card #40360.

On February 9, 1946 Doris Brin listed the following information on a Communist Party interview form:

Communist Party Experience: Doris Brin joined the Communist Party in June, 1942. No disciplinary action taken against her at the time of the interview. She had held positions of "Organizer", "Assistant Organizer", "Membership Director" and "Educational Director" of various Community Party clubs and sections.

Other Past Activity: Has been president of United Federal Workers Local. Has been active in Lawyers Guild and U.O.P.W.A., Local Union #34.

Present Activity: President of Voters League. Also active in F.T.A. in East Bay.

Future Plans: Only in F.T.A.

Marxist Study: Cercon Class, State School 1945. Quite a bit of self study.

Present Occupation: Cannery Worker. Believes she [fol. 114] should attend Communist Party State School to improve her work in shop and union. States she gave up law practice because it was frustrating to work with people she had to work with (namely, professional people). There was little connection between them and their activities and the class struggle. Her application to attend the State School was made on January 24, 1946 and stated she was a member of the Sunset Branch of the Communist Party and the F.T.A.

Company Exhibit No. 23.

[fol. 115] EXHIBIT "C" TO AFFIDAVIT

7/10/46

I made the following statement to Lloyd today and at my request that he transmit it to the State, he suggested I write it out:—

After my discussion with Lloyd and Carroll Monday morning, July 8, I gave a lot of thought to the points they raised concerning the resolution on the maritime strike introduced into the Cannery Workers Club by Elsie Smith and me. I tried to evaluate my action, as I try to evaluate whatever I do, from the point of view of the welfare of the working class and the strengthening of the Party. What had stuck me particularly in the discussion were Carroll's points as to the limited nature of our [fol. 115a] information (the daily papers, including the P.W.) and the irresponsibility implied by introducing a resolution based on such limited information.

I feel that had I not been so much on the defensive during the discussion, I would have admitted my error at that time. As it was, I spent two days (and much of two nights) thinking through what I had done, and came to the conclusion that to have introduced such a resolution into my Club did not meet my tests and was wrong. As a member of a club remote from the maritime situation and with no special information, to have introduced the resolution was irresponsible.

[fol. 115b] I want to make it clear that I had reached this position independently, before I talked to Elsie Smith yesterday. After I told her how my thinking was going, she told me that she agreed in substance and had already told the County so.

Doris Brin

[fol. 116] EXHIBIT "D" TO AFFIDAVIT

7/10/46

I made the following statement to Lloyd today and at my request that he transmit it to the State, he suggested I write it out:—

After my discussion with Lloyd and Carroll Monday morning, July 8, I gave a lot of thought to the points

they raised concerning the resolution on the maritime strike introduced into the Cannery Workers Club by Elsie Smith and me. I tried to evaluate my action, as I try to evaluate whatever I do, from the point of view of the welfare of the working class and the strengthening of the Party. What had struck me particularly in the discussion, were Carroll's points as to the limited nature of our information (the daily papers, including the P.W.) and the irresponsibility implied by introducing a resolution based on such limited information.

I feel that had I not been so much on the defensive during the discussion, I would have admitted my error at that time. As it was, I spent two days (and much of two nights) thinking through what I had done, and came to the conclusion that to have introduced such a resolution into my Club did not meet my tests and was wrong. As a member of a club remote from the maritime situation and with no special information, to have introduced the resolution was irresponsible.

I want to make it clear that I had reached this position independently, before I talked to Elsie Smith yesterday. [fol. 116a] After I told her how my thinking was going, she told me that she agreed in substance and had already told the County so.

(signed) Doris Brin

(Here follows 2 Photolithographs, side folios 117, 118)

74A

Exhibit E

REASON FOR TERMINATION				RATING				
VOLUNTARY		INVOLUNTARY		QUALITIES	Poor	Fair	Good	Excep.
BETTER JOB		CARELESS		PRODUCTION PERFORMANCE				
NOT ENOUGH PAY		DISHONEST		QUALITY OF WORK				
DISSATISFIED		INCOMPETENT		DEPENDABILITY				
LEAVE OF ABSENCE		INSUBORDINATION		COOPERATIVENESS				
SICKNESS		IRREG. ATTENDANCE		VERSATILITY				
FAMILY		LAZY		GENERAL KNOWLEDGE				
UNKNOWN		LIQUOR		TOTAL				
LEAVING TOWN		NEGLECT OF DUTY		WOULD YOU RE-EMPLOY				
REMARKS Rotate (L)				REMARKS Not employed long enough to judge what kind of worker she would make				

1.

Brin	Doris	2155
Last	First	
S. S. No. 557-20-7877	Initial	1945 '46 '47
1120 101st Ave Oakland, Calif.		Date of Application
Adm 100		Sta Date

7413

Exhibit F

APPLICATION FOR EMPLOYMENT

(Use other side if necessary)

(PRINT YOUR NAME)

CUTLER LABORATORIES

Date 10/4/46

Full Name Walker Doris Erin
 Local Address 1406-17th Ave. San Fran. 17, Cal.
 Permanent Address same as above

Sec. No. 557-20-2877
 How can we reach you by Phone Scapright 4381

Previously Employed Here: Yes ☐ No ☒

Birthplace Dallas, Tex. Citizen Yes ☒ No ☐ Religion

Date of Birth Apr. 29, 1915 Height 5'3 1/2" Weight 112 Sex F

Scars and Marks of Identification none

Single ☐ Married ☒ Separated ☐ Divorced ☐ Widow ☐ Widower ☐

Doris Walker

Live with Parents ☐ Boarding ☐ Rent Home ☐ Rent Room/Apartment ☒ Buying Home ☐ Own Home ☐

Number of dependents 0 If you have children, please state ages Husband/wife working ☐

What is your physical condition? very good List any disabilities

In case of emergency whom may we notify? Geo. Walker, Husband 1406-17th Ave. S.F. 17, Cal. 4381

EDUCATION:

No. of Years	NAME AND LOCATION OF SCHOOL (Grammar, High, College)	From	To	Graduated		Avg. Grade	Subjects of Specialization, Degrees
		Year	Year	Yes	No		
7	Dallas Grammar School	1929	1931	✓		A-	
4	H.O. Dallow High School	1931	1935	✓		A-	
2	Univ. of Texas	1935	1936		✓	A-	
2	U.C. 2 A	1936	1939	✓		B+	English

IMPORTANT: Use other side for additional educational background: (itemize important courses taken, grades, hours per week and number of weeks devoted to principle studies, Honors, etc.) (over)

PREVIOUS EMPLOYMENT (List last position first, put in the dates, and be sure to record your experience.)

No.	W.	No.	W.	NAMES AND ADDRESSES OF EMPLOYERS (Include Military Service if Any)	Position Held Nature of Work	Salary	Reason for Leaving

[fol. 119]

[File endorsement omitted]

IN SUPERIOR COURT OF SAN FRANCISCO COUNTY

MEMORANDUM OPINION—Filed March 2, 1951

The facts of this matter are as follows:

In October 1949 Doris Walker was discharged by the defendant in the midst of a labor controversy; the matter of discharge—whether it was “for just cause”—was referred to a Board of Arbitrators consisting of parties agreed upon by the said Walker and the defendant corporation; at the hearing it was developed that the defendant corporation knew, and should have known, in the year 1947 that she was a member of the Communist Party and that she falsified and omitted facts from her 1946 Application for Employment; that notwithstanding knowledge of these facts, the defendant corporation continued her in its employment until her discharge in 1949.

The Board, in its written Opinion, held that since the defendant knew, and should have known, of these facts for a period of two years it waived any rights it may have had to discharge her for either of said reasons. The Board further determined that she was not discharged in 1949 because of any Communist affiliation or false Application for Employment, but that she was discharged because of her activity in a labor dispute between the Union and the Company in 1949 while she was President of a Union and a member of the Negotiating Committee; that she was therefore not discharged “for just cause”.

Defendant's objection to the confirmation of the award is that the Board did not compel her to answer directly many questions as to her membership in the Communist Party (such as, “Are you now or have you ever been a member of the Communist Party?”), and her activities with reference thereto. The Arbitration Board at the hearing, and in rendering its Decision, stated that it would assume, and it did as a matter of fact, that she was a member of the Communist Party up to the time of her discharge, and that the Company's belief at the same time about the full implications which Party membership is believed to entail was

established without her answering the questions propounded to her. The Board also found that there was no evidence of any work stoppage, strike or other interference with production, the avowed objective of which was political, philosophical, subversive or revolutionary. The Board also determined that to have her answer these questions directly, and assuming that she would have answered them in the affirmative, would have only been cumulative or corroborative of facts which the Company knew, and should have known, for the two year period prior to her discharge. I know of no legal objection to one employing a known member of the Communist Party in its business and keeping him [fol. 121] so employed, if that be its wish. Membership in the Communist Party in itself is not sufficient to warrant a conviction under the Criminal Syndicalism Act of California. The Supreme Court of the State of California in *Communist Party vs. Peek*, 20 Cal. (2nd) 536 at 548 had the following to say:

“... to hold that this court will take judicial notice of the alleged fact that the Communist Party advocates force and violence, without any evidence of that fact, would not only require judicial notice of a fact . . . , but it would also necessitate a finding that every registered communist is a felon and could be convicted of a violation of our criminal syndicalist law upon mere proof of membership in the Communist Party. That is not the law.”

The law of arbitration is well settled. It is not the province of the Court to substitute its conclusion or opinion for the award of arbitrators nor is the award subject to judicial review unless the award was (1), procured by corruption, fraud or undue influence; (2), there was corruption in the arbitrators; (3), the arbitrators were guilty of misconduct or refused to hear evidence material to the controversy; or (4), the arbitrators exceeded their powers or imperfectly executed them. (Section 1288 C. C. P.)

I find no legal reason under the foregoing section for this [fol. 122] Court to vacate the award of the arbitrators.

The matter of whether she was discharged for just cause was the precise matter to be determined by the Arbitration

Board. Arbitrators, under the law, may base their decision upon broad principles of justice and equality, and in doing so may expressly or impliedly reject a claim that a party might otherwise have successfully asserted in a judicial action. There is no general rule in law that the arbitrators must find facts and give reasons for their award, though the arbitrators did so in this case in a 37 page written opinion. The award is definite and certain—reinstatement with back pay.

The award is therefore confirmed; motion to vacate award denied. Counsel to prepare written order.

Dated: February 28, 1951.

Edward Molkenbuhr, Judge of the Superior Court,
Dept. No. 22.

[fol. 123] [File endorsement omitted]

IN SUPERIOR COURT OF SAN FRANCISCO COUNTY

RESPONDENT'S OBJECTIONS AND PROPOSED AMENDMENTS TO
FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER
CONFIRMING AWARD—Filed March 14, 1951

Respondent Cutter Laboratories, Inc., objects to the signing and filing of the proposed Findings of Fact and Conclusions of Law, and the proposed Order Confirming Award of Arbitrators and Judgment Thereon, prepared by counsel for Petitioners upon the following grounds:

I

The trial of the above-entitled action has not been concluded.

The answer pleads as a special defense that at the time claimant Doris Walker was discharged by Respondent, and at the time the arbitration award referred to in the petition was made, the said claimant was and now is an active member of the Communist Party dedicated to said Party's program of subversion, espionage, sabotage, force and violence; that Respondent is now and was at all material times

engaged in the operation of a vital defense plant; that it would be against public policy for Respondent to employ an [fols. 124-135] active member of the Communist Party in its plant; and that the arbitration award is against public policy and is illegal and void.

These allegations of the answer raise material issues of fact and law which, under the decision of the Supreme Court in *Ewing & Evans v. Blick* (1949) 33 Cal. (2d) 603, 609-612, are matters for judicial determination upon evidence presented to the trial court. At the hearing on February 19, 1951, Respondent offered to present evidence in support of the allegations of its answer, but it has thus far been denied the opportunity to do so. Such offer is hereby renewed and a hearing and trial of said material issues is hereby demanded.

A trial is not complete until all material issues raised by the pleading have been heard and disposed of.

City of Los Angeles v. Cole (1946) 28 Cal. (2d) 509, 512;

San Joaquin etc. Irr. Co. v. Stevinson, (1916) 30 Cal. App. 405, 414.

[fol. 136] For the foregoing reasons, Respondent respectfully requests that the Court set a time and place for the trial of the issues raised by the special defense pleaded in its answer herein.

Dated: March 12, 1951.

Gardiner Johnson, Thomas E. Stanton, Jr., by
Thomas E. Stanton, Jr.; Attorneys for Respondent.

[fol. 137] [File endorsement omitted]

IN SUPERIOR COURT OF SAN FRANCISCO COUNTY

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed April 4,
1951

This cause came on regularly for hearing the 19th day of February, 1951, before the court, without a jury, Bertram Edises, of the firm of Edises & Treuhaft, appearing

as counsel for petitioners Mabel Black and T. Y. Wulff, acting in a representative capacity for and on behalf of Bio-Lab Union of Local 225, United Office and Professional Workers of America, its officers, agents and members; and Gardiner Johnson and Thomas E. Stanton, Jr., appearing as counsel for the respondent and adverse party, Cutter Laboratories, a corporation; and evidence both oral and documentary having been introduced and the cause having been submitted for decision; and the court being fully advised in the premises, finds the facts as follows:

FINDINGS OF FACT

1. That all of the allegations contained in the Petition to Confirm Arbitration Award are true.

2. That none of the allegations contained in paragraph III, subparagraphs (a) to (g), inclusive, of the respondent's Answer are true.

3. That none of the allegations contained in the Notice [fol. 138] of Motion to Vacate Arbitration Award, paragraphs numbered 1 to 6, inclusive, are true.

4. At all times mentioned in the petition on file herein, Local 225 was and now is a voluntary unincorporated association and a local labor union of the United Office and Professional Workers of America, having its main office in Oakland, California. At all of said times Bio-Lab Union of Local 225 was and now is a chapter of said Local Union consisting of several hundred employees who are employed at Cutter Laboratories. The members of said labor organization are numerous and the questions involved in this cause are of common and general interest to all of said members before the Court. Petitioner Mabel Black is now and at all times mentioned in said petition has been a member in good standing and President of said Local Union. Petitioner T. Y. Wulff is now and at all times mentioned in said petition has been a member in good standing and Chapter Chairman of the Chapter of said Local Union known as Bio-Lab Union of Local 225. All members of said Local Union are united in the common interest of enforcing the collective bargaining agreement described in said petition, and said petitioners have brought this proceeding in a representative capacity

for and on behalf of said Local Union, its officers and members and more particularly on behalf of said Chapter, its officers and members, all of whom are likewise members of said Local Union.

5. Respondent Cutter Laboratories, Inc., was at all times [fol. 139] mentioned in said petition and is now a corporation organized and existing under the laws of the State of California and having its principal place of business in the City of Berkeley, County of Alameda, State of California.

6. On or about July 23, 1948, said Local Union entered into a collective bargaining agreement with Respondent Cutter Laboratories, Inc., covering wages, hours and working conditions for all of the employees of Respondent at Berkeley, California, with the exception of executives, certain administrative employees, confidential employees and supervisory employees. A copy of said agreement is attached as Exhibit "B" to said petition.

7. Thereafter, in accordance with said collective bargaining agreement, the parties to said agreement entered into proceedings for the arbitration of a dispute over the discharge of Doris Walker, a member of said Local Union and Chapter. Said arbitration proceedings were held within the City and County of San Francisco, State of California, before a board of three arbitrators composed of Mr. Hubert Wyckoff, as neutral arbitrator, Mr. J. Paul St. Sure, designated by the Respondent, and Mr. Paul Heide, designated by said Local Union. A copy of the designation of said neutral arbitrator is attached as Exhibit "C" to said petition. A copy of the duly acknowledged Award of the majority of said Arbitration Board is attached as Exhibit "A" to said petition, and a copy of the duly acknowledged and verified dissenting opinion of Mr. J. Paul St. Sure is attached as Exhibit 1 to the [fol. 140] answer of Respondent on file herein.

8. Said petition for an order confirming said Arbitration Award, and the notice of the motion of Respondent for an order vacating said Award, were each filed within three months from and after the making of said Award.

CONCLUSIONS OF LAW

And as conclusions of law from the foregoing facts, the court finds as follows:

1. That the petitioners are entitled to an order confirming the arbitration award herein, as prayed in their complaint.
2. That respondent and adverse party is not entitled to an order vacating said arbitration award.
3. That upon the making of such order confirming said arbitration award, judgment for petitioners shall be entered in conformity therewith.
4. That petitioners are entitled to their costs of suit herein.

Dated this 4 day of April, 1951.

Edward Molkenbuhr, Judge of the Superior Court.

[fol. 141] [File endorsement omitted]

IN SUPERIOR COURT OF SAN FRANCISCO COUNTY

ORDER CONFIRMING AWARD OF ARBITRATORS AND JUDGMENT
THEREON—Filed April 6, 1951

Petitioners having duly filed with the clerk of this court a notice of motion, together with copies of the papers required to be filed, for an order of this court confirming the award of the arbitrators in the above entitled matter, and respondent and adverse party having filed with the clerk of this court a notice of motion to vacate said award of arbitrators, and the matters having been heard on the 19th day of February, 1951, and each party having been represented by counsel on said hearing, and testimony free from legal exceptions having been introduced, and the matter having then been submitted for decision, and the court having heretofore made and entered its findings of fact and conclusions of law, and the court being duly

advised in the premises, finds that the motion of petitioners above named for an order of this court confirming said award of arbitrators should be, and it is hereby granted, and that the motion of respondent and adverse party to vacate said award of arbitrators should be, and it is hereby, denied, and further finds that judgment should be entered [fols. 142-153] in accordance with the foregoing order.

Now, therefore, it is hereby ordered, adjudged and decreed that the award of the arbitrators in the above matter, dated September 16, 1950, be, and the same is hereby, confirmed, in all respects.

It is further ordered, adjudged and decreed that petitioners herein recover from the respondent and adverse party their costs, taxed herein at \$616.75.

Dated this 4 day of April, 1951.

Edward Mølkenbuhr, Judge of the Superior Court.

[fol. 1] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO,
DEPARTMENT NO. 22

Honorable Edward Molkenbuhr, Judge

No. 402,101

[Title omitted]

Excerpts from Reporter's Transcript.

APPEARANCES:

For the Petitioners: Gardiner Johnson, Esq., and Thomas E. Stanton, Jr., Esq., 111 Sutter Street, San Francisco 4, California.

For the Respondent and Adverse Party: Bertram Edises, Esq., 1440 Broadway, Oakland 12, California.

[fol. 2] Monday, February 19, 1951—2:00 o'Clock P. M.

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: You may proceed on the notice to vacate the award.

Mr. Edises: The first motion filed was a motion to confirm the award, and then there was a motion filed by the other side to vacate.

The Court: You desire to proceed with your motion first?

Mr. Edises: Well, I presume we probably have the affirmative of the issue. I am not quite sure in my own mind as to what would be the best procedure.

The Court: I assume in the end it is not going to make much difference anyway.

Mr. Edises: Well, we are prepared to go ahead.

[fols. 3-5] Mr. Edises: May it please the Court, the petitioner on the motion to confirm the arbitration award is the Bio-Lab Union of Local 225, affiliated with the United Office and Professional Workers of America. The proceeding is brought under the provisions of Section 1287 of the C. C. P.,

LEAVING TOWN		NEGLECT OF DUTY
REMARKS Rotate (L)		

REMARKS *Not employed long enough to judge what kind of worker she would make*

1

Brin	Doris	Initial
Last	First	
S. S. No.	557-20-7877	
Address	1120 101st Ave. Oakland, Calif. 1200 101st Ave. Oakland, Calif.	
New Address		
Phone	LO 8-1842	
Married	Single	XX
Age	26	Birth Date April 29, 1919
Birthplace	Texas	Citizen Yes X No
White	XX	Negro Other
Former Exp. Filling machine operator - 1 month		
Where H.J. Heinz		
Other Office work - 3 years		
Education 2 yrs. college		

1945

1946

1947

1945	2155	'46	'47
Date of Application			
Starting Date			
Vacation		Term. Date	
Permit No.		Expiration	
Date of Application			
Starting Date	4/8/46		
Vacation		Term. Date	4/11/46
Permit No.		Expiration	
Date of Application			
Starting Date			
Vacation		Term. Date	
Permit No.		Expiration	

Signature

Paul Brin

FORM NO. OGPC-02-3M 10/48

7 Dallas ~~High School~~ 1929 1931 ✓ A-
 4 No. Dallas High School 1931 1935 ✓ A-
 3 Univ. of Texas 1931 1936 ✓ A-
 2 U.C. A 1936 1939 ✓ B+ English

IMPORTANT: Use other side for additional educational background: (Itemize important courses taken, grades, hours per week and number of weeks devoted to principle studies, Honors, etc.) (over)

PREVIOUS EMPLOYMENT: List last position first, put in the dates, and be sure to record your experience.)

From	To	NAMES AND ADDRESSES OF EMPLOYERS (Include Military Service if Any)	Position Held Nature of Work	Salary	Reason for Leaving
1939		John Tripp, att'y	file clerk	35	marriage
6 months		Dr. Wm. R. Barker, dentist, S. F.			516utter ST.
		Francis McTernan, att'y, S. F.			57 Pat. (c)

Please itemize any training or outstanding work you have had in mechanical or scientific work; typing, calculating or any other business machinery; languages, handiwork, or any other accomplishment. (If more space is required, use reverse side.)

Whom do you know employed by us? (State Relationship) *no one*

How did you happen to apply here? Please Check) Suggestion of friend or relative *check*

Radio program _____ Employment Service _____

Newspaper Adv. _____

Other Sources _____

This section not to be filled in by applicant.

INTERVIEWED BY	DATE	APPEARS TO BE WELL QUALIFIED FOR	REMARKS

Date *10-1-41* Shift *Day* Dept. Name & No. *490* Code & Rate *120* Job Title *file clerk* Time Card No. *669*

Draft Classification _____ Order No. _____ Draft Board No. _____ Address _____ County _____ City _____ State _____

H. J. C. - 11 Union #1

Phi Beta Kappa - B.A. with Honors in English

which I assume the Court is familiar with. It falls within the category usually referred to as labor arbitration.

[fol. 6] Now I should like to refer briefly to the principles of law which apply in a proceeding of this kind. I think it is well settled on a petition to confirm or vacate an arbitration award the merit of the proceeding before the Board of Arbitration is not subject to judicial review. It is sometimes stated a little differently, for example in *Kerr versus Nelson*, 7 Cal. 2d, 85, at 89, the Court states that in a proceeding to confirm or vacate an arbitration award it is improper to receive evidence dealing with the merits of the case. The same holding is set forth in *Pacific Vegetable Oil Corporation versus C. S. T., Ltd.*, 29 Cal. 2d 228, at 233; in *Utah Construction Company versus Western Pacific Rail-* [fol. 7] *road*, 174 California, 156; without bothering to cite additional decisions, although there are many such, I think that the entire question of the scope of review in a matter of this kind may be stated in the following words from 3 *American Jurisprudence*, page 968, citing several California cases in support of the rule (reading):

“Unless the arbitrators are restricted by the agreement of submission, the general rule is that they are the final judges of both law and fact, and an award will not be reviewed or set aside for mistake in either. This is a reasonable view, for a contrary holding would mean that arbitration proceedings, instead of being a quick and easy mode of obtaining justice, would be merely an unnecessary step in enforcing litigation, causing delay and expense, but settling nothing.”

The Court: May I have that citation, please?

Mr. Edises: 3 *American Jurisprudence*, page 968, in the chapter entitled “Arbitration and Award.”

This principle of non-interference by the Courts with findings of fact or conclusions of law in arbitration awards goes so far that our Supreme Court has actually held to the following effect (reading):

“Arbitrators, unless specifically required to act in [fols. 8-17] conformity with rules of law, may base their

decision upon broad principles of justice and equity, and in doing so may expressly or impliedly reject a claim that a party might successfully have asserted in a judicial proceeding."

This is the case of Sapp versus Barenfield, 34 Cal. 2d, 515, and the language I read was from page 523.

Now, with that background with respect to the legal consideration applicable, I would like to touch briefly on the facts, ~~not with a view to inviting review contrary to principles I have just stated, but merely because I believe some understanding as to what the facts were as found by the Board will be helpful in disposing of any legal questions which are raised in this proceeding.~~

[fol. 18] We move that the petition to confirm the arbitration award be granted and that the motion to vacate the award be denied.

The Court: That motion is submitted.

Do you want to reply to that, now?

Mr. Johnson: I think possibly, your Honor, I might possibly be able to combine my argument and save some time. I might say to the Court I have heard this argument, and to go back on the testimony—by the way, I have two copies here of the transcript of the hearing before the Board, and if I may, right at the inception, I would like to present one to the Court, because I might care to make some references. I notice the other folks have their copy, and this set has not been marked up by me as the other set has, so possibly you would like to have it available (handing transcript to the Court).

The Court: All right.

Mr. Edises: Pardon me. May I interrupt a moment?

Mr. Johnson: Yes.

Mr. Edises: Is it your purpose, counsel, to offer the transcript of the record in evidence?

Mr. Johnson: No, not at this time. No, I have some references here in our affidavit and I may want to refer to the pages. If you don't want the judge to see it, I will come to it eventually.

Mr. Edises: No, no; it is just a question of procedure. There is some doubt in my mind as to the propriety of bringing into the record the transcript. On the other hand, I can see certain definite advantages in the Court having the transcript.

Mr. Johnson: Well, I have made up my mind; suppose you make up yours. If you don't want it before the Court, I will withdraw it.

Mr. Edises: As it now stands, the situation is this: There [fol. 20] are certain selected portions of the transcript which counsel shows in support of his affidavit. I think that under the circumstances we should either have a withdrawal of those selected portions or the entire transcript should be offered in evidence—introduced in evidence.

Mr. Johnson: I am willing to have the judge look at all of it. There is nothing in there I want to keep from the Court.

The Court: You have no objection to its being considered?

Mr. Edises: Not at all, your Honor.

The Court: Subject to the principles of law—

Mr. Edises: I will be willing to stipulate with counsel.

Mr. Johnson: I will stipulate. I will accept that stipulation, that the Court may examine any or all of it. In fact, I have a full copy of these exhibits here and I would be willing to give those to the Court.

Mr. Edises: That's agreeable, but it is understood in joining in that stipulation there is no waiver made of our contention of the limited scope of the Court's review.

Mr. Johnson: So understood.

The Court: Preserving all legal rights that you have.

(The transcript referred to was received in evidence and marked Respondent's Exhibit No. 1.)

Mr. Johnson: I told you—Honor—that the pamphlet or [fols. 21-74] package I have handed you there is the official copy of all exhibits which were sent up by the Chairman of the Arbitration Board.

Mr. Edises: I take it, now, we consider them in evidence?

Mr. Johnson: I will stipulate they may be in evidence, also.

The Court: All right. One, two, three, four, five volumes will be considered read into the record and introduced in evidence on behalf of the defendant.

Mr. Johnson: The respondent.

The Court: And the exhibits will be marked Exhibit No. 2.

(The five volumes of exhibits referred to were received in evidence and marked Respondent's Exhibit No. 2.)

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[fol. 75] (Whereupon at the request of Mr. Johnson, in order to maintain jurisdiction here, the Court made an order for Mrs. Doris Walker to be present in Court at 2:00 p. m. Monday, afternoon the 5th of March, 1951, without further order of the Court of subpoena.

[fol. 1] IN ARBITRATION PROCEEDINGS PURSUANT TO ARTICLE
XII OF CURRENT COLLECTIVE BARGAINING AGREEMENT
BETWEEN THE PARTIES

In the Matter of a Controversy between BIO-LAB UNION,
Local 225, United Office and Professional Workers of
America, C.I.O., Complainant,

and

CUTTER LABORATORIES, Berkeley, California, Respondent.,
Involving allegation that Mrs. Doris Walker was dis-
charged without just cause.

Reporter's Transcript of Arbitration Proceedings

Room 214, Sir Francis Drake Hotel,
San Francisco, California.

July 26, 1950.

Met, pursuant to notice, at 10:10 A.M.

Arbitration Board:

Hubert Wyckoff, Esq., Attorney at Law, Box 960, Wat-
sonville, California; Neutral Arbitrator and Chairman.

Paul Heide, Esq., Regional Director, International Long-
shoremen's & Warehousemen's Union, Oakland, California;
Representative selected by the Union.

J. Paul St. Sure, Esq., Attorney at Law, Financial Cen-
ter Building, Oakland, California; Representative selected
by the Company.

[fol. 2] Robert L. Moon, Esq., Attorney at Law, Suite
314, 68 Post Street, San Francisco 4, California; Local
Tribunal Clerk, Voluntary Labor Arbitration Tribunal of
American Arbitration Association, Administrator.

E. D. Conklin, Esq., Official Court Reporter and Notary
Public in and for the City and County of San Francisco.

[fol. 3]

PROCEEDINGS

COLLOQUY BETWEEN COURT AND COUNCIL

(Whereupon Mrs. Irene B. O'Brien, Notary Public in and for the City and County of San Francisco, State of California, administered the oath to the members of the Arbitration Board as follows:

Notary O'Brien: "Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?").

The Chairman: Are you ready?

The Clerk: Gentlemen, the Arbitrators have now had the oath administered to them. And I would like to ask the parties if they will both stipulate that due notice has been given to each of the parties concerned in this case.

Mr. Johnson: We stipulate to that on behalf of the Employer.

Mr. Edises: On behalf of Mrs. Walker we so stipulate.

The Clerk: Will the parties also stipulate that the requirements of the Arbitrators' oath have been satisfied in this case?

Mr. Edises: So stipulated.

Mr. Johnson: We stipulate to that. And if there were any possible defect in the form of the oath, which I believe there was, we will stipulate that the proper form can be inserted in the transcript.

Does Mr. Edises stipulate to that?

Mr. Edises: Yes, I stipulate to that.

(The proper form of Arbitrators' oath appears in the [fols. 4-13] following words, to-wit:

PAUL HEIDE, HUBERT WYCKOFF, PAUL ST. SURE, being duly sworn depose and say that they will individually and severally faithfully and fairly hear and examine the matters in controversy between the above-named parties, in accordance with the arbitration agreement dated the 23rd day of July, 1948, and that they will make a just award according to the best of their understanding.)

[fol. 14] The Chairman: Then the stipulation is that those requirements of the Association are waived and the case is properly before us,—

Mr. Edises: So stipulated. \

The Chairman: —without those steps having been taken?

Mr. Edises: That is correct.

The Chairman: Or, to put it another way, that these three letters that have been introduced here, Board 2(a), -(b) and -(c), sufficiently comply with whatever those requirements are?

Mr. Johnson: Yes. There is in addition, Mr. Chairman, one provision in the Agreement, Board Exhibit No. 1, which appears to be pertinent. This is a matter concerning which we want to call to your attention certain deficiencies in those letters.

Article XII, Step 2, on page 18 of the Agreement, says:

“The Grievance Committee consisting of not more than four (4) members and the Personnel Office. At this step the grievance shall be presented in detail in writing. A settlement reached at this point shall be put in writing and shall be final and binding on both parties if not reopened by either party within five (5) working days . . .”

Our purpose in sending the letter of October 18, which is your Exhibit 2(a), was to attempt to get the Union to state in detail what were the issues. Their response is the letter of October 24, which is 2(c). And it appears to us that there is a complete circumvention and avoidance of stating a position on one of the very vital issues in [fol. 15] this proceeding.

I hope that you do not object to my going along as you read the letter. But if you will first look at the Cutter Laboratories letter of October 18, you will note that in the fourth paragraph at the bottom of the first page Mr. Beckley said to them:

“As you are well aware, however, the meeting” (which was the grievance meeting) “did not result in any definition of issues whatever. Mrs. Walker

was represented by Mr. Bertram Edises, attorney for the Union, and when she was asked direct questions as to whether she was a member of the Communist party or engaged in Communistic activities, she was instructed by Mr. Edises not to answer and she did not answer. Mr. Edises stated that he had not given the matter sufficient consideration to state the position that would be adopted by the Union in the event of arbitration, and that the position which he stated orally at the meeting would be subject to change in the event of arbitration. Mrs. Walker did not state any position whatever, and refused either to admit or deny any of the charges upon which she was discharged."

Now, that matter is referred to in Mr. Burke's letter of October 24, at the bottom of the first page, the paragraph beginning "With respect to the other main element of your statement; i.e., the charge of communism, the Union's position is that the charge, even if it were true, would not constitute just cause for discharge, in that employees have the right to engage in political activity without hindrance or interference by the employer".

We still take the position that there is not a compliance with the terms of the Agreement and that the issue has not been drawn until there is a direct statement on that issue by the party who is seeking the grievance; in other words, that she must either affirm that she is a Communist [fols. 16-17] or else deny it. And until she does, the Board has no way of knowing what the issues are, and certainly we have no way of knowing upon what matters we are required to submit proof.

I submit that position to you.

.

[fol. 18] Mr. Edises: All right, Mr. Chairman.

How do you want to refer to the young lady who is the subject of the proceeding? The petitioner, perhaps? Or no. What is the practice in that regard?

Mr. Johnson: She is in effect a petitioner since she has requested the grievance for arbitration. In a court of law

she would be the petitioner. We will stipulate to the use of the word "petitioner".

Mr. Edises: I don't like it, particularly.

The Chairman: Is it "Miss" Walker or "Mrs." Walker?

Mr. Edises: Mrs. Walker.

The Chairman: Then I would call her "Mrs. Walker".

Mr. Johnson: There is no objection to that.

Mr. Edises: So stipulated.

Mr. Johnson: The existence—

The Chairman: Who are the appearances?

Mr. Edises: The firm of Edises & Treuhaft, 1440 Broadway, Oakland, California, by Bertram Edises, and Mr. Joseph Landisman, for Mrs. Walker.

The Clerk: What was that second name? Joseph?

Mr. Edises: Landisman. L-a-n-d-i-s-m-a-n.

The Chairman: You are an attorney at law, aren't you?

Mr. Edises: Yes.

Mr. Landisman: Yes.

The Chairman: And the appearances for the Company?

Mr. Johnson: The appearances for the Company are: [fols. 19-20] Gardiner Johnson and Thomas E. Stanton, Jr.

The Chairman: You might as well state who else is present as long as we have made some exclusions.

Mr. Edises: Also present are: Mr. William Burke, the representative of the Union; and Mrs. Walker; and Mr. Wulff. W-u-l-f-f.

The Clerk: What are your initials, sir?

Mr. Wulff: T. Y. Wulff.

The Clerk: What is Mrs. Walker's name or what are her initials?

Mrs. Walker: Doris.

Mr. Edises: Those are all of the persons present on Mrs. Walker's side of the case.

The Chairman: You may go ahead, Mr. Edises, with or without an opening statement, as you choose.

Mr. Edises: It has been pointed out to me that actually it is not just Mrs. Walker's case that is involved here but also the Union's case which is proceeding under the Union Agreement. So I will from time to time refer to it as the Union's case.

[fol. 21] DORIS WALKER, called as a witness on behalf of the Union, having been first duly sworn by the Reporter-Notary, was examined and testified as follows:

The Clerk: What is your address?

The Witness: 1033C Ninth Street, Berkeley.

Direct examination.

By Mr. Edises:

Q. You are Doris Walker, and you are the subject of this arbitration proceeding?

A. Yes.

Q. Where were you born?

A. Dallas, Texas.

[fol. 22] Q. And when?

A. April 29, 1919.

Q. And will you state what your education has been?

A. I graduated from Dallas high schools and spent one year, a freshman year, at the University of Texas; three years at the University of California at Los Angeles, where I got a B. A. degree in English; and three years at the University of California Law School in Berkeley, where I got an L. L. B.

Q. Did you have any honors at college?

A. Yes. I made Phi Beta Kappa at UCLA and I made Law Review at the Law School.

Q. Being on the Law Review is considered to be a sign of special scholastic eminence, is it not?

A. Yes.

Q. Will you state what your employment history has been, the jobs you have held?

A. My first job was when I graduated from law school. I went to work for the Office of Price Administration in San Francisco, and I worked—

The Chairman: What year was that?

The Witness: That was in 1942, I believe. Yes.

By Mr. Edises:

Q. What was your job there?

A. I was an enforcement attorney.

Q. And that consisted in what?

A. Well, I was one of a staff of attorneys charged with the legal work involved in enforcing price control. For [fol. 23] a while I worked in the district office—I forget what the geographical boundaries of the district were—and for a period I worked in the regional office, whose jurisdiction covered a number of western states. I don't recall exactly which ones outside of California.

Q. What was your salary?

A. Well, when I started I had not yet been admitted to practice and I did not have professional rating. I started at what was known as a CAF-4, and the salary was \$1,800 a year. At the time I resigned, I had professional status. I believe it was called P-3. And I don't remember the exact salary, but I think that it was \$3200 a year. That's not—I can't remember exactly.

Q. And when did you leave that job?

A. In February of 1944.

Q. And what was the next job that you held?

A. I was employed as an attorney by the law firm of Gladstein, Grossman, Sawyer & Edises.

Q. And how long did you remain at that job?

A. Until January of 1946.

Q. And can you state what led you to leave that job?

A. Yes. I had originally gone to law school because I was interested in becoming a labor lawyer. I was interested in the labor movement. And after I had worked for a labor law firm for a period of time I found that I was not involved in labor cases as such; that my time was spent on routine civil matters—divorces, adoptions, personal injury cases and the like—and I became dissatisfied with my work [fol. 24] and felt that I would rather take a more active role in the field in which I was interested. And so I quit in order to take a job in a plant.

Q. And do you recall when you quit?

A. Yes. I quit in January of 1946.

Q. 1946?

A. Yes.

Q. And what was your next job?

A. For the H. J. Heinz Cannery.

Q. And what did you do there?

A. I was a canning machine operator.

Q. And how long did you continue in that job?

A. I was laid off at the end of a month, and I was never recalled.

Q. Can you state the circumstances of your layoff?

A. It requires going into some of the reasons why I was at H. J. Heinz in the first place.

Q. All right. Go ahead and tell us.

A. Well, at the time that I went to work at Heinz the CIO Cannery Workers' Union, known as the Food, Tobacco and Agricultural Workers Union, was conducting an organizing drive among the canneries in Northern California, and I felt that this would be an opportunity for me to take an active role in the organized labor movement. And so I got a job there in order to help organize the CIO on the job. And after I had been there for about three weeks I began to sign up workers on the job in the CIO [fol. 25] Union. And after a few days I was observed doing so by my forelady, and the following day I was laid off.

Q. And what was your next job?

A. For the Gerber Cannery.

Q. By the way, was this previous job in Oakland?

A. In Berkeley.

Q. H. J. Heinz in Berkeley?

A. In Berkeley.

Q. And where was Gerber?

A. In Oakland.

Q. What was your job there?

A. Well, miscellaneous woman's work in the cannery. I sorted spinach and trimmed carrots and trimmed potatoes.

Q. And how long did you keep that job?

A. Four days.

Q. And what were the circumstances of your termination?

A. There was a general layoff and I was among the workers laid off. Most of the workers laid off, including myself, were advocates of the CIO Union. At the time that I was laid off, along with several other workers I went into the personnel office to find out whether or not we would be called back when the cannery re-hired, stating

that we were members of the CIO, as was known to the personnel office, and we wanted to be sure that we would not be discriminated against in re-hiring. And the personnel department refused to give us any such assurance.

Q. Have you completed your story about your termination at Gerber?

A. Yes.

Q. Did you then get another job?

A. Yes.

Q. What was it?

A. Santa Cruz Fruit Packing Company, canning asparagus.

Q. And how long did you hold that job?

A. Two or three weeks. I don't recall exactly.

Q. And what were the circumstances of your termination there?

A. Well, by this time I had come into contact with a number of the officials of the Teamsters Union, which was the rival AFL Union involved in the organizing drive in the canneries. And one day when I was canning asparagus on the line a number of the officials of the union came to the plant and observed me there, as I observed them. And the following day I was told that my work was "unsatisfactory" and I was discharged.

Q. You mean by this time you had become known to the Teamsters; is that correct?

A. That's correct.

Q. Did you then get another job—

Mr. Johnson: What was that last question?

(Question and answer read.)

By Mr. Edises:

Q. Did you then get another job in the canneries?

A. No, I did not.

Q. What was your next employment?

[fol. 27] A. Well, my next employment was for the Food, Tobacco and Agricultural Workers Union as a union organizer in the cannery organization campaign.

Q. And of what did your duties consist?

A. Well, I wrote and distributed leaflets at plant gates; talked over loud-speaking equipment at plant gates; helped

organize union meetings; visited workers in their homes to talk to them about the union and to talk to them about joining the union.

Q. And how long did that employment continue?

Mr. Johnson: What was that last statement?

(Answer read.)

By Mr. Edises:

Q. And how long did you keep that job?

A. Until the week following the NLRB election in the canneries, which was the end of August or the first week in September 1946.

Q. And were you then laid off?

A. Yes.

Q. And what was the reason for that?

A. The election had been—The results of the election were in doubt; there was no need for a large staff of organizers; and most of the union organizers were laid off at that time.

Q. I see. Now, what was your next job?

A. Cutter Laboratories in Berkeley.

Q. And can you state what led you to seek employment at Cutter Laboratories?

A. Well, I needed a job very badly. I also knew that there was a CIO union in the plant and that Cutter Laboratories [fol. 28] would be a place where I could be active as a trade unionist.

Q. You say you "needed a job badly". What do you mean by that?

A. Well, I mean that I had to work to eat.

Q. What was the date on which you applied for work at Cutter Laboratories?

A. It was early in October 1946. I don't remember the exact date. The first week in October.

Q. Now, you state that there was a CIO union at the plant. Do you mean that there was a CIO union that was the bargaining representative and had a contract at the plant?

A. That's correct.

Q. And what was that union?

A. United Office and Professional Workers of America, Local 225.

Q. And how did you go about applying for work?

A. I went to the personnel office and was interviewed by someone in the personnel office, given an application to fill out, which I filled out, and was interviewed on the basis of the application and was told that if the Company needed me I would be contacted "in a few days". I went home, and in a couple of days I received a telephone call telling me that they thought they had a job for me.

I came in, and we discussed the job. It was mutually satisfactory, and I went to work the following day.

Q. When you applied at Cutter Laboratories, were you requested to fill out an application for employment?

[fol. 29] A. Yes.

Q. Is this a photostat of the application that you were required to fill out?

A. Yes.

Mr. Edises: I would like to have this marked for identification. Well, I may as well offer it in evidence.

The Chairman: That will be Union Exhibit No. 1.

(Photostatic copy of Application for Employment, Cutter Laboratories, of Doris Walker was received in evidence and marked Union Exhibit No. 1.)

[fol. 30] By Mr. Edises:

Q. Now, calling your attention to the application for [fol. 31] employment, Mrs. Walker, which is Union Exhibit No. 1, the material on this application which is above the heavy black line asks certain information about your address, physical facts. Will you look at those facts and state whether they are all true and correct?

A. Yes, they are.

Q. Now then, beneath the first heavy black line under the general heading "Education:", there appears first the statement that you were seven years at Dallas grammar schools; graduated; average grade A-minus. Is that correct?

A. Yes.

Q. The next line: Four years North Dallas High School; average grade, A-minus. Is that correct?

A. Yes.

Q. Next,—I can't make out how many years. I guess that is one year at the University of Texas.

A. One year.

Q. Average grade, A-minus. Is that information correct?

A. Yes.

Q. The next: three years at UCLA; average grade, B-plus. Is that correct?

A. Yes.

Q. Is there any item with reference to your education which you omitted from that statement?

A. My law school education was omitted.

Q. And will you tell the Board what led you to omit that [fol. 32] statement?

A. Well, I felt sure that I would not be hired for any clerical job at Cutter Lab. for which I was applying if the company knew that I had received a law school education; that they would consider me in a sense over-educated for any such job and therefore wouldn't hire me.

The Chairman: When you say "clerical job", what do you mean?

The Witness: Well, I mean office work: typing, filing.

The Chairman: Was that the kind of job you contemplated getting there?

The Witness: Yes.

By Mr. Edises:

Q. The word "(over)" appears at the bottom of the section on Education; and on the reverse of the application appears the words "Phi Beta Kappa" and "B. A. with Honors in English". That is correct, is it not?

A. Yes.

Q. Now coming to the next section, headed "Previous Employment", there appear the figures "1939", "John Tripp, Att'y", "file clerk", "salary \$35"; "Reason for Leaving, marriage". Was that statement true or false?

A. It was false.

Q. And will you state to the Board what led you to make that false statement on the application?

A. Well, I felt that in order to get a job I would have to show some kind of previous experience. And so I made up [fol. 33] some previous experience, feeling quite sure that I could handle any job that they gave me.

Q. You felt that your qualifications were such that they were at least the equivalent of experience as a filing clerk; is that correct?

A. That's right.

Q. And you were confident that you would be able to give the Company its money's worth; is that right?

A. That's right.

Q. Where did you get the name John Tripp?

A. Well, when I worked in the OPA my immediate superior for part of the time I worked there was a man named John Tripp McTernan. It was just the first name that came to my mind, and I used it.

Q. He was an attorney?

A. He was the regional enforcement attorney.

Q. So that you had worked for a John Tripp McTernan; is that correct?

A. That's right.

Q. Now, the next item is Dr. William R. Berke, Dentist, San Francisco, 516 Sutter Street. Was that correct or, incorrect?

A. Well, I was asked by the lady who interviewed me for the names of two references.

Q. Oh, I see.

A. And these two names are both the references that I gave.

Q. Oh, I see. That is why you put the addresses in there? [fol. 34] A. Yes. I didn't write the "516 Sutter St." That's not my handwriting.

Q. Let me see if I understand you. These two names, Dr. William R. Berke and Francis McTernan, Attorney, were the names of persons whom you gave as references?

A. That's correct.

Q. Is that correct?

A. Yes.

Q. And were not intended to refer to jobs which you held?

A. That's right.

Q. And was that stated in your conversation with the employment clerk—

A. Yes.

Q. —or the personnel clerk?

A. Yes.

Q. Now, you did not state under the heading of "Previous Employment" your employment with this law firm or your employment with the canneries. Will you tell the Board why you didn't list those?

A. Well, I had been told by persons I knew in the CIO that Cutter Laboratories was—

Mr. Johnson: This is objected to, Mr. Chairman, as being hearsay of the rankest kind; an attempt to explain a material omission by some self-serving declaration as to conversations with people who are obviously partisan.

Mr. Edises: Mr. Chairman, it goes to her state of mind, [fol. 35] which is a matter of fact.

The Chairman: What do you want to do about evidentiary objections? Do you want to participate in rulings?

Arbitrator St. Sure: I prefer that they be left to the Chairman entirely.

The Chairman: Do you want to participate in rulings?

Arbitrator Heide: No. Go ahead.

The Chairman: I doubt very much if it is hearsay; and even if it is, there is nothing unusual about hearsay coming in in arbitration proceedings.

The objection is overruled.

Read the question, please.

(Question and partial answer read.)

A. (Continuing:) —an anti-union employer. And I was confident that if I told them that I had worked for a firm of labor attorneys, such as the firm I had worked for was, or that I had been a union organizer, I would not be hired. So I didn't tell them.

By Mr. Edises:

Q. Do you know whether he—

The Chairman: That proof comes in simply as indicating what she was acting on, not as evidence of the fact of the declaration.

By Mr. Edises:

Q. Do you happen to know whether the firm of— What was its name at the time? Gladstein, Grossman, Sawyer & Edises?

A. Yes.

Q. Do you happen to know whether they were attorneys [fol. 36] for the CIO?

A. They were attorneys for a number of CIO unions and also, I believe, for some of the CIO Councils.

Q. As a matter of fact were they not also attorneys for the State CIO Council?

A. Yes, they were.

Q. Now, other than the matters to which you have referred and that we have already covered, is the other information on this application correct?

A. Yes.

Q. Were there any other omissions of matters called for on this employment application?

A. No, no. I think I filled in all the other blanks correctly.

Arbitrator St. Sure: May I interrupt a moment, Bert.

On this section referring to the previous employment, the figures and words "6 or 8 months" appear. You didn't touch on that.

Mr. Edises: Oh, I am sorry.

Arbitrator St. Sure: Were those written in by Mrs. Walker or someone else?

By Mr. Edises:

Q. Will you explain that, Mrs. Walker.

A. They were written in by the lady that interviewed me, and they were in response to her question as to how long I had worked for John Tripp.

Mr. Edises: I see.

The Chairman: How long had you worked for John Tripp [fol. 37] McTernan?

The Witness: Well, the time that I was in the regional OPA office. I don't recall exactly how long it was, but it was about nine months or a year.

By Mr. Edises:

Q. Were any other questions asked you in the course of your filling out the employment application that you can now recall?

A. No.

Q. Were you asked whether you were a union member?

A. No.

Q. Were you asked about any political affiliations—

A. No.

Q. —or views?

A. No.

Q. Did you obtain employment following your application?

A. Yes, I did.

Q. And in what capacity?

A. As a label clerk.

Q. And when did that begin, if you know?

A. Well, it began October 10th or 11th—I don't recall which of those days—1946.

Q. And describe the job.

A. I was responsible for keeping in order all of the records concerning labels, cartons and direction sheets for the products produced by Cutter Laboratories; for ordering them from the print shop; for proofreading the proofs; [fol. 38] seeing to it that the orders were produced on time. That was the general job.

Q. In what department were you?

A. Production planning, I believe was the name of it at that time.

Q. Was that office work?

A. Yes.

Q. And your job title was Label Clerk; is that right?

A. That's correct.

Q. What was your salary at the time of hiring?

A. Well, I was classified as a Senior Clerk. That was the job classification under the contract with the Union. And I don't recall what the salary was at that time. It changed at each succeeding union-company negotiation, and I just don't remember what it was at the time I was hired.

Q. Could you estimate for us within certain range?

A. Yes. About, say, between one hundred and seventy and one hundred and eighty-five a month. I don't recall.

Mr. Johnson: It is indicated, Mr. Chairman, if I might cut in, on the bottom of the application in the material which was written on by somebody at the Laboratories as being Classification 5, range 160-170; title, Label Clerk.

By Mr. Edises:

Q. Does that strike you as correct?

A. Yes.

Q. All right. Who was your immediate superior at the time?

A. I don't remember his name. I would know it if I heard it, but I forget it.

[fol. 39] Mr. Wagner: Howard Fuller.

The Witness: Yes. Howard Fuller.

By Mr. Edises:

Q. Howard Fuller. And do you know what his title was?

A. He was the head of production planning, I believe.

Q. Was this work all carried on in an office?

A. Yes.

Q. Did you have anything to do with production of any commodities?

A. No.

Q. Did you physically paste labels on any commodities?

A. No.

Q. It was just paper work; is that right?

A. That's right. Except for the expediting part of the job, which consisted of checking with the print shop to see where our orders were.

Q. Orders for labels, you mean?

A. Yes.

Q. Now, did you keep the same job during the entire period of your employment with Cutter-Laboratories?

A. No. My job was changed after about two years, and I was transferred to the purchasing department.

Q. And what job did you hold there?

A. I was a clerk-typist. I typed purchase orders, filed various records in connection with the purchase orders, and did general typing for the department.

[fol. 40] Q. Was this also done in an office?

A. Yes.

Q. And you had no connection with production work?

A. None.

Q. You didn't do any physical work of any kind; is that right?

A. No.

Q. Now, when you first were employed what was your status? Were you a regular or a probationary employee?

A. I was a probationary employee.

Q. And what does that mean?

A. Well, that meant that the Company could discharge me at any time up to the conclusion of a three-months' period if they found that I was not a satisfactory employee, either with regard to my work or with regard to my relations with my supervisors or my fellow workers.

Q. Did you satisfactorily complete your probationary period?

Mr. Johnson: That is objected to as calling for the opinion and conclusion of the witness. The evidence shows that she was there until 1949.

Mr. Edises: Maybe it is laboring the obvious, but it is a question of fact.

The Chairman: Yes, I think it is. Why don't you reframe the question.

By Mr. Edises:

Q. At any rate, you completed your probationary period?

A. That's correct.

[fol. 41] Q. And then you obtained regular status; is that right?

A. Yes.

Q. Did there come a time when you joined the Union at the plant?

A. Yes.

Q. And do you recall when that was?

A. It was several months after I was employed. I don't recall exactly when it was.

Q. Was it before or after you completed your probationary period?

A. I'm not positive but I think it was after.

Q. And did you proceed to become active in the Union?

A. Yes.

Q. Of what did your activity at first, initially, consist?

A. Attending union meetings and occasionally speaking from the floor. Also I gave a little assistance to one of the Union officers in the plant in collecting an assessment, I think it was.

Q. And did there come a time when you were elected to an office in the Union?

A. Yes.

Q. And when was that?

A. It was in the spring of 1947; I think April.

Q. And to what office were you elected?

A. I was elected shop chairman.

Q. Shop chairman?

A. Yes.

[fol. 42] Q. Just what do you mean by that?

A. Well, that was the leading officer in the Union at Cutter Laboratories.

The Chairman: What was the date?

By Mr. Edises:

Q. Can you give us the date on that?

A. That is April 1947.

Q. That is to the best of your recollection?

A. As I recall, yes.

Q. Was the Cutter Laboratories unit more or less an autonomous unit within the Local?

Mr. Johnson: That is objected to as being incompetent, irrelevant and immaterial as far as these proceedings are concerned.

Mr. Edises: Well, I will withdraw it. I don't know that it matters particularly.

By Mr. Edises:

Q. At any rate, this shop chairmanship was an office limited to the employees of Cutter Laboratories; is that correct?

A. Yes, except that the shop chairman was automatically a member of the Local Executive Board.

Q. I see. So that you were shop chairman and a member of the Local Executive Board; is that right?

A. That's right.

The Chairman: That is the Local Executive Board of what?

The Witness: Local 225, United Office and Professional Workers.

[fol. 43] By Mr. Edises:

Q. That is the Local that is involved in this present proceeding, is it not?

A. Yes. Perhaps a word of explanation. A Local is an amalgamated Local and consisting of members who work in a number of different offices and laboratories and shops. Cutter Laboratories was one.

The Chairman: How many besides Cutter?

The Witness: At that time I think nine or ten.

The Chairman: What kind of plants were they?

The Witness: Well,——

The Chairman: For example?

The Witness: For example, a photo developing plant; testing and research laboratory in an industrial plant like Paraffine Company; offices in several social work agencies.

By Mr. Edises:

Q. Did you also have some nurses or hospital employees?

A. Laboratory at a hospital, yes.

Q. Professional employees?

A. Yes. Laboratory technicians.

Q. Now, how were you elected? What was the mode of election?

A. Nominations for offices were made at one meeting, and the following month at the regular meeting further nominations were taken, and then the election was held at that meeting.

Q. It was held in a meeting of the Union; is that correct?

A. In a meeting of the Union members at Cutter Laboratories.

Q. I see. And what kind of a ballot was it?

[fol. 44] Mr. Johnson: That is objected to as being incompetent, irrelevant and immaterial, unless somebody is particularly curious.

Mr. Edises: There is——

The Chairman: Just a moment.

Are you interested?

Arbitrator St. Sure: No.

Mr. Edises: May I indicate the purpose, Mr. Chairman?

The Chairman: Yes.

Mr. Edises: Well, the Company takes the position (they have taken it previously in proceedings involving this matter) that her union activities and her achieving union office were a part of some kind of a sinister plot. We simply want to show that she was democratically elected by secret ballot by her fellow union members.

The Chairman: Overrule the objection. Answer the question.

A. It was a secret ballot; a written ballot.

Mr. Edises: I see. Now,——

The Chairman: Before you pass on. What was the membership of that Local at that time, numerically?

The Witness: Of the entire Local?

The Chairman: Yes.

The Witness: It was about twelve hundred at that time, I believe.

The Chairman: How many members were at Cutter Laboratories?

The Witness: About somewhere between four hundred and five hundred. I don't know where to put it. Between [fol. 45] four and five hundred.

The Chairman: Were there more members at Cutter Laboratories than any other place?

The Witness: I think there were just as many members at Shell Development, or almost as many in any case. But those were the two largest.

The Chairman: Those were the two largest. The other things that you have been talking about were negligible? You have accounted for about a thousand employees now?

The Witness: No.

The Chairman: Would two hundred members be spread among these others?

The Witness: I said there were 1200 members in the Local, and I imagine between Shell and Cutter there must have been about seven or eight hundred. So there were about four hundred spread among the other shops. Those were far and away the two biggest, but there were about 50, I think, at Paraffine at the time. Something like that.

The Chairman: How many of them attended meetings?

The Witness: Shop meetings or Local meetings?

The Chairman: Both.

The Witness: Local meetings about a hundred; and shop meetings, it varied considerably, depending upon how close we were to contract time.

By Mr. Edises:

Q. Do you recall approximately how many employees were present at the meeting where you were elected shop [fol. 46] chairman?

A. Well, there were approximately eighty or ninety.

Q. Was that an average-size meeting?

A. For an election meeting it was.

Q. And was the meeting publicized?

A. Oh yes.

Q. And the purpose of the meeting was publicized?

A. Yes.

The Chairman: Were most of the members of this Local women?

The Witness: I imagine something over half, and at Cutter Laboratories most of them are women. I think about 60, 65 percent.

By Mr. Edises:

Q. Now, how long did you remain shop chairman?

A. Two years.

Q. Two years?

A. Yes.

Q. And during this two-year period did you hold any other union office?

A. Yes. Besides the Executive Board office, which I held by virtue of being shop chairman, I was elected to the State CIO Executive Board.

Q. How were you elected to that?

A. At a State CIO convention. The method of electing Executive Board members—Do you want me to go into that?

Q. First let me ask you this:—

Mr. Johnson: Just as a matter of stating our position, [fol. 47] Mr. Chairman, we think that this is completely irrelevant, at least to any issue which has been raised up to now in this proceeding. On that ground, unless someone is particularly interested in it, we object because we believe that it is incompetent, irrelevant and immaterial.

Mr. Edises: May I be heard on that, Mr. Chairman?

The Chairman: You might talk me out of ruling in your favor.

I will overrule the objection.

Mr. Edises: I don't want to be heard unless necessary.

By Mr. Edises:

Q. Did you attend the CIO convention?

A. Yes. I attended as a delegate from Local 225.

Q. You were elected as a delegate?

A. That's correct.

Arbitrator St. Sure: When was this?

Mr. Edises: I beg your pardon?

Arbitrator St. Sure: When was this?

By Mr. Edises:

Q. When was this?

A. It was—I think it was the 1947 convention, and it would have taken place in November or December of 1947.

Q. Were you elected as a delegate to the convention by vote of the membership?

A. The membership of the Local, yes.

Q. And you then attended the convention?

Mr. Johnson: May the record show, Mr. Chairman, that we object to this entire line as being—

[fol. 48] The Chairman: Yes.

Mr. Johnson:—just idle gossip and of no relevancy in this proceeding.

The Chairman: Your objection can be noted and run to all of this line.

By Mr. Edises:

Q. And how did you obtain your post as member of the State CIO Council? Was that by election?

A. Yes. The constitution at that time provided that all of the members of a particular International Union who were present at the convention from whatever locals were represented would caucus and designate their representative to the State CIO Executive Board, and I was elected in that manner by all of the delegates from UOPWA Locals throughout the State.

Q. These Local delegates selected you as their nominee; is that right?

A. That's correct.

Q. And then was the matter confirmed by the convention?

A. Yes.

Q. The convention then went on record as favoring your selection; is that correct?

A. That's correct.

Q. Did you hold any other union office during that period?

A. Which period do you refer to?

Q. I am speaking now of this two-year period when you were shop chairman.

A. I think I held an office in the regional UOPWA Council [fol. 49] cil. I seem to recall something of the kind.

Q. At the end of this two-year period what happened? Were you elected to any other office?

A. Yes. I was elected as chief shop steward at Cutter Laboratories.

Q. And of what did your duties consist?

Mr. Johnson: Mr. Chairman, before we get into that, could I interject just to find out, as long as this testimony is being allowed, if the lady has fixed the date in response to Mr. St. Sure's question? I don't have it. Did she fix the date when she was elected to the State—

Arbitrator St. Sure: Late in '47. November of '47.

The Chairman: November of '47.

The Witness: That's correct.

Mr. Johnson: Did she fix the date when she was elected to what she called some office in the Regional CIO Council?

Mr. Edises: I don't think she said she was "elected". She said that she held some office in it.

The Witness: UOPWA Council.

The Chairman: No, she didn't fix a date for that.

By Mr. Edises:

Q. Can you fix a date for that?

A. I'm afraid I can't. It would be the latter part of that period, but I can't fix the date.

Mr. Johnson: Would that be 1948?

The Witness: Probably.

By Mr. Edises:

Q. All right. Then tell us what your duties as chief [fol. 50] shop steward consisted of.

A. Primarily they were: working with the various department stewards on the grievances which arose in those departments; if the grievance went beyond the first step, acting as one of the union representatives in taking up the grievance with the Company Personnel Department; and working with the grievance on through to any other steps that it might go in the procedure laid out in the contract.

Q. How did you get into that job? Was it by election?

A. Yes.

Q. How were you elected?

Mr. Johnson: The same objection as previously registered. Mr. Chairman:

The Chairman: You have had objection preserved.

A. I was elected in the same way that I had been elected shop chairman: by secret ballot.

By Mr. Edises:

Q. In a —

A. In a shop meeting called for the purpose of electing officers.

Q. And it was a meeting open to all members of the shop unit?

A. Yes.

Q. And was it publicized?

A. Yes.

Q. And you had this chief shop steward job, then, in place of your shop chairman's job?

A. That's correct.

[fol. 51] Q. I see. And did you maintain your membership in the State CIO Council too?

A. Yes. State CIO Executive Board.

Q. State CIO Executive Board.

A. Yes.

Q. And calling your attention now to this second period, did you hold any other union positions?

A. In the Regional UOPWA Council. I was the chairman.

Q. In your various union offices did you come in contact with the Company in regard to union matters?

A. Yes. Very much so.

Q. And just broadly, what was the nature of those contacts?

A. Well, primarily in the processing of grievances. That was true both when I was shop chairman and chief steward, since both of those offices entailed representing the Union on grievance matters. But also in connection with various other problems that arose, such as the union bulletin boards, various activities of the stewards or the officers in the plant which might come under discussion. Primarily, however, on grievances.

Q. How would you characterize your activities? Would you say that you were very active during this period about which we are speaking?

A. Yes, I would.

Q. With reference to your work for the Company, were there any reports or ratings made by the Company of your services?

A. Yes.

[fols. 52-53] Q. What type of reports were they?

A. Well, my immediate supervisor filled out a rating sheet at periodic intervals. I don't know exactly what those intervals were.

Q. There were periodic ratings; is that correct?

A. Yes.

Q. Were those ratings made known to the employees?

A. They could be if the employee requested it, but they were not made known as a matter of course. And I did not request it.

Q. As long as the employee's services were satisfactory, was there any occasion for the employee to inquire into the ratings?

A. Not unless he got curious about them.

Q. Have you ever seen any of those rating sheets?

A. Yes, I have.

Q. Can you identify this (indicating prospective Union Exhibit No. 2)?

The Witness: Do you (indicating the Chairman) want this?

The Chairman: No.

By Mr. Edises:

Q. Is that an example?

A. Yes.

Q. Is that a rating sheet pertaining to yourself?

A. It has my name at the top.

Mr. Edises: It is dated August 16, 1949, it refers to Doris Walker, and is offered as a specimen of the type of a personnel rating sheet used in the plant.

[fols. 54-55] Mr. Edises: It is offered to indicate the type of rating methods used by the Company and also specifically with reference to Mrs. Walker.

Arbitrator St. Sure: That clears it up.

The Chairman: Union Exhibit No. 2.

(Copy of Personnel Rating Sheet of Doris Walker dated August 16, 1949 was received in evidence and marked Union Exhibit No. 2.)

[fol. 56] By Mr. Edises:

Q. Mrs. Walker, during the period of your employment with Cutter Laboratories did the Company or any Com-

pany representative ever give you any indication of how it regarded the quality of your work?

A. Yes.

Q. Will you state what that indication was?

A. Well, when I was label clerk my supervisor told me on several occasions that he was very pleased with the quality and speed of my work. And after I was trans-[fol. 57]ferred to the purchasing department Mr. Wagner, of the personnel department, told me that my immediate supervisor, Mr. Davisson, had commented to him that he was very pleased with the quality of my work.

Q. Now, did there come a time when to your knowledge the Company employed some kind of investigating agency to make an investigation of yourself?

A. Yes.

Q. Can you fix the time?

A. It was immediately after I was elected shop chairman for the first time.

The Chairman: What date would that be? April of '47?

The Witness: Yes. April or May. It was right after the election.

By Mr. Edises:

Q. What was the first indication that you had of such an investigation?

A. One of my neighbors came to me and told me that a man had been around questioning him and various other neighbors about me and my habits and the persons who came to see me and my political views; and that this person, this man who had done the questioning, had told him and the other neighbors that he was conducting the investigation on behalf of Cutter Laboratories.

Q. And what questions were you informed had been asked about you?

Mr. Johnson: We object to this as being hearsay of the rankest kind.

Mr. Edises: Well, let me say this, Mister—

[fol. 58] The Chairman: Well, this will have to be connected up to stay in, and I would suggest you let him go ahead and it will come in subject to a motion to strike.

A. Well, I indicated already the man wanted to know what my neighbors knew about my political views and whether Negroes visited me in my home. Questions of that kind.

By Mr. Edises:

Q. Were you ever given any information by the Company about this investigation?

A. Not directly, until the Unemployment Insurance hearing several months ago.

Q. Was the matter of the investigation ever the subject of dealings between the Union and the Company?

A. Not as such. There were various references to it in grievance meetings. The Company representative, especially Mr. Beckley or Mr. Cutter, would make various little references to things that they said they knew about me. But there was never any direct discussion of the investigation as such.

The Chairman: What did they say?

The Witness: Well, the first instance was during the negotiations to settle a strike which occurred in the summer of 1947. During the course of the negotiations Mr. Cutter made some remark to the effect that I was a lawyer and he knew that I was a lawyer. In grievance meetings which occurred during the whole period of my time there Mr. Beckley would sometimes—I remember one occasion in particular when he asked Mr. Burke, who was also present as the union business agent, What position would he take [fol. 59] with a person who had falsified his job application?

The Chairman: When was that?

The Witness: That was—I guess that occurred, I don't know, a number of months before I was discharged. Six months, eight months, or something like that. And there were similar occasions throughout my entire period as a union officer.

By Mr. Edises:

Q. Have you ever been arrested or convicted of any crime?

A. No. I got a speeding ticket once.

Q. I mean other than a minor traffic violation.

A. No, no.

Q. Now, did there come a time, Mrs. Walker, in the year 1949 when the Union opened negotiations with the Company over the renewal or amendment of the contract?

A. Yes.

Q. And were wages an issue?

A. Yes.

Q. Do you recall when those negotiations were opened?

A. In June of 1949.

Q. And did you participate in the negotiations?

A. Yes, I did.

Q. Without going into any great detail, because I intend to bring this matter out a little more fully through Mr. Burke, can you just tell us what the general course of the negotiations was?

A. Well, the negotiations became deadlocked after a few meetings. The Company refused to grant the Union [fol. 60] demands or any portion of them.

Q. What was the Union's wage demand?

A. Twenty cents an hour increase.

Q. Did you participate in all of the dealings with the Company in all of the negotiations?

A. Yes.

Q. And in the course of the negotiations was the subject of strike action ever considered?

A. Yes, yes.

Q. Did there come a time when a reference was made to the Company's labor policies and the status of the negotiations in a radio broadcast by Sidney Roger?

A. Yes.

Q. I am leading you here, but was the date of that October 2, 1949, as far as you can tell?

A. That sounds about right.

The Chairman: Was there a negotiating committee from the Union?

The Witness: Yes, there was.

The Chairman: Who was on it?

The Witness: Well, the committee was elected by the members in the shop. There were, I think, nine members on the committee elected, and I was one of the elected members.

Q. Now, did you know at the time that you were with the firm that that firm was also attorneys for the Communist Party?

Mr. Edises: Now, just a moment.

I object to that as irrelevant; as an attempt to introduce a prejudicial factor into the case. The question of whom a firm or a lawyer represents is a matter strictly up to the lawyer and from which no inference of any kind is to be drawn. Mr. Johnson may represent crooks from time to time, but that doesn't necessarily give rise to the implication that he is a crook. And I think that the question is entirely improper.

The Chairman: Well, maybe the question doesn't imply that either.

Why is it material?

Mr. Johnson: Well, I submit, Mr. Chairman, that the lady opened that up this morning by stating in answer to Mr. Edises' question that this law firm represented certain unions.

This question is preliminary. He takes the position apparently that her interest was in union activity. She so stated. We take the opposite position and have stated affirmatively here, and the issue is into the case directly, that her activity was as an active partisan in the Communist movement. And this is preliminary for the purpose of [fol. 84] showing that the young lady was actively associated with the legal firm which was the official representatives of the Communist Party in California.

Mr. Edises: We may as well have this issue out now, Mr. Chairman, because it is obvious that it is going to arise continually throughout the hearing. So I would like to present our views on the question of the relevancy of what they seek to make the issue of this case.

The Chairman: Go ahead.

Mr. Edises: The position that we take is set forth in our letter of October 24 1949. That is that with respect to the charge of her being a Communist, that charge, even if it were true, would not constitute just cause for discharge. And we consequently take the position that it is not necessary for her to enter an admission or denial of the truth of that allegation.

The Chairman: Was there a chairman or spokesman for that committee?

The Witness: There was a chairman and a secretary. [fol. 61] The main spokesman was the business agent, Mr. Burke.

The Chairman: Mr. Burke?

The Witness: Yes. I was neither chairman nor secretary of the committee.

The Chairman: When you say "main" spokesman, were there some other spokesmen besides Mr. Burke?

The Witness: Well, occasionally other members of the committee would ask questions or make statements.

The Chairman: Who were they?

The Witness: All of us at one time or another.

The Chairman: You say there were nine of you all told.

The Witness: I believe that was the number.

The Chairman: And did all nine attend all of the negotiating sessions?

The Witness: No, not all of them. They occurred during the summer months. Sometimes one or another would be absent on vacation or away because of illness. But most of them were there at all times.

The Chairman: Were you there at all times?

The Witness: As I recall, I was.

The Chairman: Who was on the other side? How many?

The Witness: Well, Mr. Wagner; Mr. Johnson I believe was there;—

Mr. Johnson: (Shaking head negatively).

The Witness: (continuing)—Mr. Stanton was there; and part of the time Mr. Beckley, or he was out of town part of [fol. 62] the time; Mr. Cutter, one or two other people from the personnel department were also there whose names I forget; a young fellow named Grant Powell was generally there; and the Company had a stenographer there making a record of the discussions.

The Chairman: So the sessions were reported?

The Witness: Well, they weren't reported in the sense that—

The Chairman: Not in the "Conklin" sense?

The Witness: I didn't get that.

Arbitrator St. Sure: It would have to be very good!

By Mr. Edises:

Q. They were just rough notes?

A. I couldn't tell you. I never had a transcript.

Q. You didn't have the Stenotype Reporting Service?

A. No. The Company had their own stenographer there and she made shorthand notes. And I never saw a transcript and I don't think that the Union ever got a transcript.

Q. Did you testify that there was a broadcast by Sidney Roger on the subject of the wage negotiations and the Company's labor policy?

A. Yes, there was.

Q. And following that broadcast did the Union publish any newspaper advertisement dealing with the wage dispute and the Company's labor policy?

A. Yes, it did.

Q. I hand you a copy of a portion of the Oakland Tribune for Wednesday October 5, 1949, and I ask you if you can [fols. 63-65] identify an advertisement which appears on page 24 as the advertisement about which I asked you.

A. Yes.

Mr. Johnson: May I see it? I don't take the Tribune.

Mr. Edises: I will offer this in evidence as the Union's exhibit next in order.

The Chairman: Union Exhibit 3.

(Pages 19-24 of Oakland Tribune for Wednesday, October 5, 1949, on a portion of page 24 of which appears advertisement entitled "Can You Support A Family On \$42.91 A Week?", received in evidence and marked Union Exhibit No. 3.)

[fol. 66] Direct examination (continued):

By Mr. Edises:

Q. I believe that I was in the process of asking you whether there was published in the same newspaper, the Oakland Tribune, the reply by the Company to the advertisement of October 5 published by the Union.

A. Yes, there was.

It is our view that the political affiliations of an employee are immaterial; as a matter of public policy they are immaterial and the Company has no right to inquire into them.

In substance our position on this question is more or less tantamount to a demurrer. In other words, we do not concede the correctness of the charge but we take the position that it does not state any just cause for discharge.

Now, we have taken that position consistently. We took that position in the hearing which was had before a referee of the Department of Employment, which, incidentally, agreed with our contention; and we have, whenever the [fol. 85] matter has come up as far as Mrs. Walker is concerned, consistently adhered to that position. We have, as a matter of fact, advised her that in our opinion there is no obligation on her part to respond to that question. And that is our position here.

The second wing of the argument is that, true or false, the record shows that it was of no concern or consequence to the Company until it behooved them to make something of it. The record will show (and I hereby make an offer of proof) that the Company was convinced that she was a Communist within six months of the time that she was hired; that they nevertheless retained her in their employ, gave her good ratings, and did not fire her until this very tense union situation on which we have had some testimony.

That is our position in this hearing. We are willing to have the Arbitrator treat the matter in the same way that he would treat a demurrer to a complaint. But we believe that in view of the fact that the Company itself had this knowledge, believed it had this knowledge, and the fact that they did nothing about it, the fact that they never even took the trouble to ask her the question herself while she was in their employ, it is of no moment in this proceeding.

The Chairman: Of course in this letter that was read to Mrs. Walker at the time of her discharge the Company does specify that as a ground for discharge, does it not?

Mr. Edises: They do, yes.

The Chairman: Didn't Clark Kerr make a decision touching [fol. 86] ing somewhat on this topic?

Mr. Johnson: No. I think you are referring probably to

Q. Are you able to identify this as the reply?

A. Yes.

Q. From internal evidence, I gather that this was published on or about October 11. Is that your recollection?

A. That sounds right.

Mr. Edises: I would like to offer this as the Union's exhibit next in order.

The Chairman: Union 4.

Have you seen it, Mr. Johnson?

Mr. Johnson: Yes. I have seen that one, Mr. Chairman.

(Copy of advertisement published in Oakland Tribune of October 11, 1949 over the signature of Fred A. Catter was received in evidence and marked Union Exhibit No. 4.)

By Mr. Edises:

Q. I have already asked you about the Sidney Roger broadcast of October 2 and the Union's newspaper ad of October 5. I would like to ask you whether on or about the latter date you were present at any meeting between [fol. 67] the Union and the Company where those matters were mentioned.

A. I was present at a grievance meeting with the Company at which the radio broadcast was mentioned.

Q. And can you place the date of that?

A. It was the day before I was discharged, and that was—

Q. And you were discharged when?

A. On October 6. So that would make it October the 5th.

Q. Where did this meeting take place?

A. In Mr. Beckley's office.

Q. And who was present for the Union besides yourself?

A. Bill Burke, our business agent, and Nelline Smith, the assistant chief steward. I don't recall anyone else, besides myself.

Q. And who was present for the Company?

A. Just a moment. For the Union, the shop chairman may have been present. I am a little fuzzy. I seem to recall that he was there. His name is Don Rightmyer. He was the shop chairman at that time. I missed him.

Q. And who was present for the Company?

A. Mr. Beckley; Mr. Cutter; John Wagner; Gardiner Johnson. I don't recall whether or not Mr. Stanton was there. I don't believe he was. And I also don't recall whether or not there was a stenographer present. There may have been. I just don't remember.

Q. Now, the Fred Cutter is the gentleman who is sitting at the table here?

[fol. 68] A. Yes.

Q. And is Mr. Wagner likewise present in the room?

A. Yes, he is.

Q. Do you happen to know what his position is or was at that time?

A. Well, his title has always been a matter of mystery to me, but I know he is the personnel officer. I don't think I have ever heard his exact title mentioned.

Q. Did you say Mr. Beckley was present?

A. Yes, he was.

Q. And who is Mr. Beckley?

A. He is the vice-president in charge of industrial relations.

Q. And Mr. Gardiner Johnson?

A. Yes.

Q. Is that the gentleman who is sitting to your left?

A. Yes.

Q. Was it customary for Mr. Johnson to attend grievance committee meetings?

A. I don't believe I had ever seen him at a previous grievance committee meeting.

Q. Now, what if anything was said about the radio broadcast?

A. When the Union committee came into the room Mr. Cutter said that he believed that we should dispense with the usual amenities in view of the scurrilous attack on the Company made by the Union in the radio broadcast the preceding Sunday. And there was more discussion about it. Do you want me to continue?

[fol. 69] Q. Yes. Tell us as well as you can recall.

The Chairman: What were the "usual amenities"?

The Witness: Well, generally we smiled and said "Hello" to everybody and shook hands. And we came in and said

"Hello, Fred"; "Hello, Art", and that was when Mr. Cutter said "We'll dispense with the usual amenities".

By Mr. Edises:

Q. What was his manner? Just describe his manner and appearance in saying that.

A. He was extremely angry, and when he said the words his whole manner was one of great anger.

Q. And tell us the rest of the conversation, if you can recall it.

A. He turned to me and he said, still speaking of the radio broadcast: "Were you responsible for it? Are you the one responsible?" And then he turned to Mr. Burke: "Were you responsible?" And Mr. Burke answered him, saying that the Union had been responsible for it.

Q. Now, did he ask any other person in the group other than Mr. Burke and yourself if they were responsible?

A. No, he didn't.

Q. He just limited his question to you and Mr. Burke?

A. That's correct.

Q. And you were the only employee to whom he addressed this question; is that correct?

A. That's correct.

Q. Was there any further conversation?

[fol. 70] A. I don't recall any further conversation about the radio broadcast. We went into a discussion of the grievance. It was a grievance concerning another employee, who, incidentally, was also present. I see I left out another person who was present. I forgot him. The employee whose grievance we were taking up was there.

Q. Was there any discussion during the meeting or immediately following the meeting on any subject not connected directly with the grievance?

A. Well, there was some discussion during the discussion on the grievance that wasn't really connected with it. At least from the Union's point of view it wasn't connected with it.

Q. What discussion was that?

A. Well, there were some references—

Mr. Johnson: We have no objection, Mr. Chairman, to the witness telling what happened. I think we should register

objection to her own characterization as to whether or not statements that were made had any relevancy.

Mr. Edises: I will agree that her characterization may go out.

By Mr. Edises:

Q. Just tell us what was said. I am not interested at the moment in the technical discussion of the grievance, but any matters outside of the grievance.

A. Well, the Company linked its attitude on the grievance to a strike which had occurred at the plant several years previously which Mr. Cutter stated during the course [fol. 71] of the grievance that I had led. And that is what I was referring to in answer to your question.

Q. Now, was there any discussion with Mr. Cutter or any other Company official after the grievance?

A. Well, when the grievance was concluded Mr. Cutter turned to me and said "You get back to your job right away. I don't want any of this standing around, talking to Burke". That's approximately. That was the gist of what he said.

Q. And will you describe his tone and manner of stating that?

A. He used an angry tone; irritable—irritated tone.

Q. Were you fired the next day?

A. The following morning.

Q. Describe the incidents immediately preceding the firing.

A. I was working at my desk when I was told by, I believe, my supervisor or perhaps his secretary that I was wanted in John Wagner's office "immediately". And I went over to Mr. Wagner's office and he took me into Mr. Beekley's office. There was present also a stenographer. I can't remember which one it was. One of the secretaries in the office. And Mr. Beekley had a paper in his hand. He said to me: "I am going to make this just as formal as possible", and took up the paper. And I asked him to wait, and said that I wanted a Union representative present in any meeting with him. And he agreed and asked me which one I wanted. I said I wanted the assistant chief steward, Nelline Smith, since the shop chairman wasn't at

work. So he asked Mr. Wagner to send for Nelline Smith. [fol. 72] And when she got there, with no further preliminaries he began to read the paper he had in his hand. The paper was a statement of—I don't know exactly how to describe it, but at any rate the net effect of it was that I was fired for certain reasons stated in the paper, and—

Q. Could you examine this paper and see if its contents correspond to what was read to you at the time?

A. This looks like the statement which was read to me.

The Chairman: Have you seen it, Mr. Johnson?

Mr. Johnson: I think I have seen it.

Yes, I have seen it.

The Chairman: Do you have some extra copies of it?

Mr. Johnson: I do have, yes.

The Chairman: Do you offer it?

Mr. Edises: Yes, I think so.

The Chairman: Union 5.

(Copy of three-page typewritten statement under date of October 6, 1949 addressed "Mrs. Walker:" was received in evidence and marked Union Exhibit No. 5.)

The Chairman: May we glance at it for a moment?

Mr. Edises: Do you want to mark it? I would like to use it.

The Chairman: Yes. I would like to glance through it, if I may.

Mr. Edises: Surely. Go ahead.

The Chairman: Go ahead.

By Mr. Edises:

Q. Mrs. Walker, you say it was Mr. Cutter who read [fol. 73] the statement?

A. No. Mr. Beckley.

Q. Mr. Beckley, Did he confine himself to reading from the statement?

A. Well, yes. When he finished I asked him some questions—

Q. The question was, During the period when he was reading, did he apparently confine himself to the paper?

A. That's right. That's right.

Q. At least he didn't look up or extemporize as far as you could determine?

A. No, no.

Q. All right. Then did he read it through without a break?

A. Yes.

Q. And what occurred at the conclusion of the reading?

A. I asked if I could ask some questions, and he said that the whole thing was contained in the statement. And I asked him if I could have a copy of the statement, and he said, "No".

Then I said: "I still don't understand why you are firing me now. You say yourself, and I know it's true, that you have known for some time that I falsified my job application, and I don't understand from what you have said why you are firing me at this late date".

And he said: "The statement speaks for itself."

I asked him again for a copy of the statement, and he refused. And then he told Nelline to get back to her job "at once", and he told John Wagner to see to it that I was got-[fol. 74] ten out of the plant "immediately".

Q. When you said that the Company had known about these misstatements, did you have in mind the statement at the beginning of this paper "As you are aware, the company has known for some time that when you applied for work with Cutter Laboratories on October 4, 1946, you made a number of false representations on your 'Application for Employment' "?

A. I had that statement in mind and also my own knowledge for some time that the Company had known about some of the misstatements of fact.

Q. You mentioned one element entering into your knowledge, namely, the statement that you were a lawyer. Was there any other item that you were aware of which showed the Company's knowledge of these misstatements?

A. Well, Mr. Wagner in our grievance meetings would often refer to the fact that I had had legal training, and I think I mentioned also earlier that Mr. Beckley on several occasions during the course of grievance meetings would bring into the discussion in one way or another the fact that a person present had made false statements on a job application.

Q. Did the matter of your employment by the canneries ever come up in the course of any of your dealings with the management or representatives of the management?

A. Yes, it did. While I was working at Cutter the unfair labor practice case before the NLRB arising out of my various discharges came up for hearing, and I was sub-[fol. 75] poenaed by the Board as a witness and had to be excused from work in order to attend those hearings. I showed the subpoena to my immediate supervisor, Mr. Davisson, in order to explain my absence from work.

The Chairman: When was that?

The Witness: I think it was in the early fall of 1948.

The Chairman: Does anybody know when the date was?

The Witness: Mr. St. Sure probably knows.

The Chairman: It is a matter of record, is it not?

Mr. Edises: Do you remember, Paul?

Mr. Stanton: September 30 and October 1, 1948.

Mr. Johnson: Mr. Chairman, we submit, of course, that the answer is not responsive to the question.

The Chairman: All I want to know is the date of the NLRB hearing that she is talking about.

Mr. Johnson: She testified before the National Labor Relations Board in the canning cases on September 30 and October 1, 1948, according to the copy of the transcript that we made.

Now may I state my objection?

The Chairman: Yes.

Mr. Johnson: The answer to the question was not at all responsive.⁶ Apparently he is trying to find out if the Company had notice of these things and he asked her if management had ever been advised of her employment in a cannery. Her answer was that on a certain date she showed her superior a subpoena.

The Chairman: Yes. And what was the man's name?

The Witness: His name was Mr. Davisson. I explained to [fol. 76] him what the subpoena was about.

Mr. Johnson: Possibly I don't make my point very well. As I understand it, ordinarily showing a subpoena doesn't put a person on notice that you are an employee of a cannery.

Mr. Edises: Well, let's find out.

By Mr. Edises:

Q. Did you tell your superior what the subpoena was about?

A. Yes, I did.

Q. What did you tell him?

A. Well, I told him that this was a case arising out of a previous employment and that I was subpoenaed, I had to attend the hearing, and here was the subpoena.

Q. And did the subpoena have the title of the case?

A. Yes.

Q. Was that California Processors and Growers?

A. Yes, yes.

Q. Do you remember whether—

A. Well, I don't think it had "California Processors and Growers". I think it had the name of a cannery on it, "et al".

Mr. Edises: Do you have the document there with the title of it?

Mr. Johnson: I have it the way we put it down. We copied it from an NLRB document.

And the way we have it, Mr. Chairman,—Maybe you would like to—

Mr. Edises: May I have a look at it?

[fol. 77] Mr. Johnson: Oh yes. You have seen it many times before.

Mr. Edises: Yes, that looks familiar.

The Chairman: "In the Matter of Berent-Richards Packing Company, Sacramento, et al; Case No. 20-C-1347, Before the National Labor Relations Board, Twentieth Region".

Mr. Johnson: There were, I think, a long series of other employers involved. I think this has been copied the way the NLRB records start out.

Mr. Edises: I think it is a fact that the general title of the case is Berent-Richards, usually referred to as "The Berent-Richards case".

Mr. Johnson: I see, Mr. Chairman, if you would like to examine it, that we have copied the title page of the transcript with the more complete title, including the unions involved.

The Chairman: Now, that is 1948?

Mr. Johnson: That is right: September 30 and October 1 1948.

By Mr. Edises:

Q. Now, Mrs. Walker, after this statement was read to you, did Mr. Beckley or any other Company representative ask you any questions about any of the matters referred to in the statement?

A. No.

Q. Did they ask you any questions as to the truth or falsity of any of the charges set forth in the statement?

A. No.

Q. As a matter of fact, had the Company at any time during your employment, from the day you started work [fol. 78] until you were fired, ever asked you to give them a statement with respect to these misstatements on your application blank?

A. No.

Q. Did they ever ask you to state why you made those misstatements?

A. No.

Q. Did they ask for an explanation of your reasons for making them?

A. Never.

Q. Did the Company ever ask you about any of the other matters referred to in this statement?

A. No.

Q. Did they ever ask you any questions about your political views or affiliations?

A. No.

Q. Did they tell you that political views or affiliations were a factor in employment at the Cutter Laboratories?

A. No.

Mr. Edises: That completes my direct examination:

Cross examination.

By Mr. Johnson:

Q. Mrs. Walker, you testified this morning that you were employed in a series of canneries. Did you give us the dates of those various employments?

Mr. Edises: I believe she did, to the best of her ability.

[fol. 79] By Mr. Johnson:

Q. Well, let's take the first one. As I got it, your first employment after you left your job as an enforcement attorney for the Office of Price Administration was with the firm of Gladstein, Grossman, Sawyer—

Mr. Edises: Sawyer and Edises.

Mr. Johnson: Yes.

By Mr. Johnson:

Q. And that employment with that law firm began when?

A. In February of 1944.

Q. And you stayed there how long?

A. Until January '46.

Q. So that you didn't leave the law firm until January '46, and your employment with Cutter's began in early October of '46?

A. That's right.

Q. So that there is a gap there of approximately nine months between your leaving the law firm and your going to Cutter's?

A. Yes.

Q. In the meantime, as I got it from your testimony, you had been employed in four different canneries?

A. Three.

Q. Three? The first one was the Heinz Company?

A. That's correct.

Q. Tell us when you went to work at the Heinz plant, if you remember.

A. Well, it was early in January. The first week in January 1946.

[fol. 80] Q. And at which Heinz plant did you work?

A. The one in Berkeley.

Q. That's the one located at San Pablo Avenue and University, isn't it?

A. San Pablo and Heinz I think are the streets that it is on. Between Ashby and Heinz it is on.

Q. It is Ashby and San Pablo?

A. Yes.

Q. And that plant is about how far from Cutter Laboratories?

A. Half a mile; three-quarters of a mile.

Q. That's right. And how long did you stay at the Heinz plant?

A. About a month.

Q. When you went there did you file a written application for employment?

A. I was asked some questions in the employment office. I don't recall filling out any forms and I don't recall signing anything although I may have.

Q. Was any question asked there about your previous experience?

A. I don't believe so.

Q. Anything asked there about your education?

A. I don't believe so.

Q. You didn't volunteer that you were a lawyer, I assume?

A. No, I did not.

Q. And you stayed at the Heinz plant how long?

A. About a month.

Q. Now, what did you say was your reason for leaving [fol. 81] the Heinz plant?

A. I was laid off.

Q. Laid off. And I understood you to say this morning that you were laid off and that you had been observed signing up people for the FTA Union?

A. That's correct.

Q. When you say that, do you mean that officials of the plant had, to your knowledge, observed you signing up people for the FTA Union?

A. My forelady had observed me.

Q. She had observed you. And your statement is that you were signing up people for the FTA Union?

A. That's correct.

Q. Now, did you join that union when you went into the Heinz plant?

A. Shortly afterwards.

Q. How soon afterwards?

A. A week perhaps.

Q. Within a week. Now, isn't it a fact, Mrs. Walker, that what you were seen doing was soliciting people at the plant for subscriptions to the "People's World", a newspaper?

A. No.

Q. That is not true?

A. No.

Q. Do you state positively that none of the plant employees saw you soliciting people for subscriptions to the [fol. 82] "People's World" at that plant?

Mr. Edises: That is objected to as already asked and answered and as obviously outside her knowledge. How could she testify as to what every single person in the plant may have seen or not seen?

The Chairman: Just a moment.

Read the question, please.

(Question read.)

Mr. Edises: It has already been asked and answered.

The Chairman: I will overrule the objection.

A. No.

By Mr. Johnson:

Q. Well, do you state that positively?

A. Yes, I state it positively.

Q. By the way,—

The Chairman: Of course she doesn't know what other people saw, but she knows what she was doing. So I think that she can answer that question.

By Mr. Johnson:

Q. By the way, you testified this morning in answer to Mr. Edises' question that this law firm that you worked for were the attorneys for the CIO Council; is that right?

A. That's right.

Q. And that they were attorneys, I think you said, for the FTA and a number of the CIO unions?

A. I didn't say the FTA, although they were. I said "for a number of CIO unions".

Q. Now, you knew those facts? You knew that that law [fol. 83] firm represented those people?

A. Yes, I knew it, I guess. I wasn't directly concerned while I was with the firm with any cases involving the FTA, and if I knew it I knew it in a vague sort of a way. I had no contact with it.

the religious-issue decision that he handed down in Cutter Laboratories.

Mr. Edises: He didn't have any decision on it.

Mr. Johnson: There wasn't any decision on it.

The Chairman: I don't mean on this specific point, but wasn't that on a question of religious belief?

Mr. Edises: That was on a question of religious belief.

The Chairman: As far as the tenor of your argument goes, why wouldn't an inquiry into a person's religious belief be as immaterial as an inquiry into their political beliefs?

Mr. Edises: We took the position in that arbitration that the inquiry into a person's religious beliefs amounted to discrimination.

The Chairman: Yes.

Mr. Edises: The decision of Dr. Kerr was limited to a holding that the inquiry was not discrimination.

The Chairman: I read the award. It is reported in the Bureau of National Affairs Reports. As I understood that award, he held that that in and of itself is not an improper question to put on an application for employment. Is that correct? Am I correct in that?

Mr. Edises: No, he did not so hold. We were bringing the proceeding under a provision of the contract that states that the employer shall not discriminate because of religion. [fol. 87]

The Chairman: Is that what it was based on?

Mr. Edises: That was the question. I will show you the section, Mr. Chairman.

The Chairman: Has anybody got a copy of that award?

Mr. Stanton: We have at the office.

The Chairman: I don't want it right now, but I would like to have it available here.

Mr. Johnson: We will make it available to you at the beginning of the morning session.

Mr. Edises: The section under which we proceeded was Article X, Section 1, which appears on page 16.

"Both parties agree that they will not discriminate against a present or prospective employee or member because of race, color, national origin, religious belief, or Union affiliation."

The Chairman: And that is what he was addressing himself to?

Mr. Edises: He held merely that the asking of the question did not per se constitute discrimination. As I recall, his language was that the fact that it might possibly be used as a basis for discrimination did not bring it within the language of the contract.

Mr. Johnson: Mr. Chairman, may I state very briefly one or two points so that the Board has our position on this.

I think this is probably a classic example of why it is not wise to raise major issues on collateral questions, and I think my question which is being objected to here does [fol. 88] raise this Communist issue in rather a collateral way. But the peculiar point of Mr. Edises' position is that in making an objection to my question he has made you an offer of proof. I do not understand how that is done. But he offers to prove that the Company had knowledge for some two years that the lady was a Communist, but he wants to preclude me from asking her what her knowledge and associations were before she came into the plant. In other words, he wants to make a demurrer, and while making the demurrer he wants to prove certain things in answer to my points which he wants to foreclose me from going into.

I submit seriously that this issue is spread throughout this case. It is in the statement of discharge: There isn't any question about it that in this instance the Company squarely took the position that this lady was a member of the Communist Party and that that is one of the grounds for which she was discharged. That is the discharge as to which the Union has raised the question of whether it is just cause or good cause.

I would gather that the Board is not in a position to make a decision on that unless they have heard rather thoroughly whatever evidence the Company has to submit on that. And I am beginning to get into it. I say, Only beginning. It is a preliminary question. But we will be right into the heart of it.

On Mr. Edises' point of talking about political affiliation. In the first place, there isn't anything in the contract pro-

teeting against that political affiliation question. But entirely aside from that, I submit that in the Lockheed Air- [fol. 89] craft Corporation case, which is reported in 28 Cal. (2d) 481, the Supreme Court of California has expressly taken the position that we take: that charging a person with being a Communist is, not just a question of political affiliation. It goes beyond that. In spite of their zeal and the witness's efforts to keep calling this thing "political beliefs" and never to mention the word "Communism", the issue has been raised.

The Supreme Court said in that case, referring to Section 1101 of the Labor Code:

"We find nothing in the section which is intended to prevent an employer engaged in producing vital war materials from discharging an employee who advocates the overthrow of our government by force or whose loyalty to the United States has not been established to the satisfaction of the employer."

Essentially that is the position which we take here, and that statement of discharge stated the matter in those terms.

I do not know whether you want to hear extended argument now, but so that you have our position, that is essentially it.

Mr. Edises: Mr. Chairman, may I state that Mr. Johnson misunderstood my offer of proof. I did not offer to prove that they knew that she was a "Red". I said, I offer to prove that they were convinced or believed two and a half years before they fired her that she was a Communist and that they did nothing about it. Now, there is a difference.

The Chairman: I would like to talk to the other two Board members for a moment. Can we take a recess so that I can talk to them alone here?

[fol. 90] Mr. Edises: May I just add one further thing.

We are perfectly willing that in the Board's consideration of the applicable legal considerations that apply here it may treat the matter as if they believed in good faith on the basis of evidence that she was a Communist.

(Here followed short recess to permit of executive session.)

The Chairman: Mr. Conklin, will you read the last two or three sentences of Mr. Edises' remarks just before he left the room, please.

(Statement read.)

Mr. Edises: The Company, that is. The word "they" means the Company.

The Chairman: Treating that as an admission, do you accept it? Do you want it read again?

Mr. Johnson: I will put it this way, Mr. Chairman: We will accept it as far as it goes. We are not satisfied to go that far and no further. And we feel that that is very obviously what it appears to be: an effort to foreclose us from developing all the facts so that the implications might be before the Board.

The Chairman: What do you mean by "developing the facts"? What facts?

Mr. Johnson: Let me put it this way: He is not admitting that the young lady is a Communist.

Mr. Edises: That's right.

The Chairman: That's right.

Mr. Johnson: He is not admitting that. He is merely [fol. 91] admitting that the Cutter Laboratories in good faith believed that she was a Communist.

The Chairman: Upon the basis of evidence. Didn't he use the words "upon the basis of evidence"?

Mr. Johnson: Yes, he did.

Mr. Edises: Well, it is implied in good faith.

The Chairman: Yes.

Mr. Edises: I am not conceding that the evidence established any fact.

The Chairman: What you mean is evidence that satisfied their minds.

Mr. Edises: Yes, yes. That's correct.

The Chairman: In good faith.

Mr. Edises: Yes. But let me make one thing clear, because I don't want to mislead anybody: I am not conceding that there was good faith in connection with her discharge.

The Chairman: No, no.

Mr. Edises: Or that the discharge was motivated by their belief.

The Chairman: No, I don't understand your admission to go that far.

Mr. Edises: Yes, yes.

Mr. Chairman: No, I do not.

Mr. Edises: Yes:

The Chairman: Now, inasmuch as the inquiry here is essentially into the motives of the Company, why do you [fol. 92] need to develop any further proof once you have that admission?

Mr. Johnson: Because we feel for one thing, Mr. Chairman, that that is not the limit of this investigation. I can discharge an employee of mine in the best of good faith and with the highest motives, but I can be wrong and an arbitrator can say that I was wrong. And if he does, the employee ordinarily is reinstated. They have raised the question under the contract as to whether or not this discharge was for good cause, and our motives, no matter how laudable, are not the final issue. Your determination, as we understand it, is to resolve in your minds whether or not the discharge was for good cause.

The Chairman: That's right.

Mr. Johnson: Now, he wants——

The Chairman: What further proof do you need once you have that admission? That is what I want to know.

Mr. Johnson: Well, we think that we have raised the issue directly that this lady was a member of the Communist Party and that we are entitled to prove——

The Chairman: Prove that fact?

Mr. Johnson: —or attempt to prove that fact.

Mr. Edises: May I state this: The Company is not going to prove it out of her mouth. If they want to prove it or try to prove it in some other way, let them go ahead and do it, and I will withdraw the admission or withdraw the stipulation.

The Chairman: All right. I come back to you, Mr. Johnson. Why is that fact material once you have the [fol. 93] admission in the record that you have here? What

difference does it make whether she was a member of the Communist Party or not—

Mr. Johnson: We think it is very—

The Chairman: —once you have an admission in the record that you believed that to be a fact in good faith, if the inquiry here is simply into your motives?

Mr. Johnson: I would think, Mr. Chairman, that you or any other arbitrator or arbitration board constituted under a contract of this type would reserve to yourselves the right to determine whether or not the facts (not what a party believed them to be, but the facts) constituted good cause. I want to prove the facts, not what Cutter Laboratories believed. In other words, Mr. Cutter and all of his associates might have the highest and the best motives, but even the best people are wrong, and courts of law and arbitrators constituted under collective bargaining agreements are entitled to say to them that "You are wrong."

It just seems to me very clear that what he wants us to seize upon and be satisfied with could be established beyond any question and that still you would be quite proper in ruling against us.

Mr. Edises: Mr. Chairman, I would say that counsel's argument might be correct if there were a denial here so as to raise an issue of fact. There is no denial. There is a demurrer. We neither admit nor deny. We take the position that it is legally irrelevant.

Now, counsel takes apparently the benign position that [fol. 94] he is only interested in the facts and is interested in giving her a chance to clear herself. Well, that is very far from the realities of this case, and counsel is aware of it.

They are not going to prove in this arbitration proceeding and they could not prove whether she is a Communist or not, because I am not going to permit her to answer that question. Therefore all that they could do would be to bring in evidence showing that they had some basis for their suspicions, for their beliefs. And that is all that could come out of it. You could not even make a finding on that issue in the posture of this case.

In order to expedite this proceeding and to defend what

is a principal position as far as Mrs. Walker is concerned, we are willing to make a concession of everything that they could possibly prove. And anything further, I submit, goes beyond the necessities of proof and actually gets on to a species of persecution.

The Chairman: I would like to hear you some more, because I am still dubious about the relevance of the proof of the facts. Isn't it true that if you engage in this course of proof, all you would be doing would be establishing the truth of the admission? That is, that you had grounds for the belief—

Mr. Johnson: Even so—

The Chairman: —and acted on that belief.

Mr. Johnson: Let us discuss, may we, that point for a minute.

The Chairman: Sure.

[fol. 95] Mr. Johnson: Because that I think is quite clear.

The famous case and the controlling one in California is the Great Western Power Company case in which the now Honorable Judge Carter was one of the successful attorneys for the plaintiffs. It was a Great Western Power Company case involving some young children who went on to land on which the Great Western Power Company had a wire that had gone down. They got onto the wire and were severely burned.

In a damage suit in which Judge Carter was attorney for the plaintiffs, as I recall it, they attempted to offer proof from the physicians of the extent of the injury and the terrible burns and the long treatment and the horribly disfigured form of the children when they were brought to the hospital. The company conceded the extent of the injury, or attempted to, so as to foreclose that damaging proof.

The Supreme Court said that as a matter of probative procedure a party cannot, by making concessions and admissions, preclude the other party from pursuing his examination for the purpose of bringing out before the tribunal and laying on the table, so to speak, the evidence in all of its gory details. In other words, a party is not in the position by concessions to preclude the other one from bringing witnesses to lay the evidence out on the table.

Essentially that is what Mr. Edises is doing here. As

he says now, he is telling you in so many words that regardless of what your order is, he is going to tell her not to answer. And you are going to sit here helpless, as he thinks. [fol. 96] Now, that is not true. Under the arbitration procedure in our law you are entitled—

The Chairman: Let's not get off into that, because we will face that when we come to it.

Mr. Johnson: This issue raises it, Mr. Chairman.

Mr. Edises: May I say in reply that this is not a court proceeding, and a rule of law which is laid down for the benefit of plaintiffs in personal injury cases in order to give the jury an opportunity to sense the pain and suffering that was involved is very different from the issues that are presented here. And I submit that the analogy is completely inapplicable.

The Chairman: Now, just as a matter of relevance, if you adduce a lot of proof of the facts, as you call them, what conclusion will they be addressed to? I mean, What is their relevance? Relevant to what?

Mr. Johnson: They will be addressed to two issues, as we view it, Mr. Chairman:

1. The facts which we will adduce and about which I am now asking her will go, first, to the issue of whether or not she was a member of the Communist Party.

2. —

The Chairman: I mean, What is that relevant to?

Mr. Johnson: The discharge.

The Chairman: But I mean, What aspect of it?

Mr. Johnson: The Company discharged this lady on the [fol. 97] ground that she was a Communist, a member of the Communist Party and so stated. The Union has challenged that as being a good cause.

The Chairman: Yes.

Mr. Johnson: They take the position that, in addition, being a member of the Communist Party is just a matter of political affiliation. We disagree with that.

The Chairman: I understand that. But those are ultimate questions that we will have to determine.

Mr. Johnson: That is right.

The second issue is that all of the facts will go to the question of the extent and the aggravation of the misrep-

representations. For instance, I would guess that it is obvious to you now, because you have had a lot of experience in these matters, that a lady who has been a lawyer affiliated with the firm of Gladstein, Grossman, Margolis & Sawyer (without being personal about it) would not be employed by the average employer who knew that. She so stated.

Mr. Edises: May I enter a demurrer to that.

Mr. Johnson: All right.

Mr. Edises: I have had a lot of ex-employees employed elsewhere and expect to continue to have. What has that got to do with it?

Mr. Cutter: Do they all lie?

The Chairman: Just a minute. Let him go ahead.

Mr. Johnson: At any rate, from the lady's own statement it is apparent to her and must be to all that Cutter [fol:98] Laboratories would not have employed her. In other words, the facts that I want to elicit now go directly to the extent and the aggravation of the misrepresentations and the degree of injury to the Company. And without a full opportunity to inquire into that, as full certainly as Mr. Edises had this morning to go into all of these offices that she held in the unions and the manner in which she was elected and whether she went to conventions and how she was nominated, it would just seem to me that your panel does not have the full picture before you or fair picture.

The Chairman: Well, maybe you still don't understand what is troubling me. Here is an employer who calls an employee in and says "I discharge you because you are a member of the Communist Party". That discharge is called into question afterwards.

Mr. Johnson: Yes.

The Chairman: The employee could call that into question by saying that "The discharge is unjust because the charge is baseless in fact. I am not a member of the Communist Party and I will prove it, and there was no basis for your making that assertion".

Now, this litigant doesn't say that at all. This litigant says here through her attorney "You made that charge and we are prepared to admit on the basis of whatever evidence you had before you that you reached that conclusion in good faith".

Now, if you have that admission I don't see that you need any more. Because all these facts that you anticipate producing here will simply establish what is already established [fol. 99]: that you had some basis which you considered sufficient for arriving at that conclusion, and you arrived at the conclusion in good faith.

Mr. Johnson: Oh, not at all. I think you—

The Chairman: What else will they establish?

Mr. Johnson: They will establish that she was a member of the Communist Party.

The Chairman: But how is that relevant to the inquiry here except in so far as it bears on your motives?

Mr. Johnson: Our motives, as we view it, are not the subject of this inquiry. The subject of the inquiry is, What are the ultimate facts? Was she a member of the Communist Party? That is the basis on which we discharged her. That is the question that you must determine, is it not?

I am asking the question. I think you are trying to reason the thing out, and I am trying to be of assistance. It seems to me that one could go the full way with you, the full way of being lulled into accepting Mr. Edises' offer, and still be completely out as far as the final determination is concerned.

And there is nothing "benign" about this. I want to assure Mr. Edises of that. We could have the highest motives but still the dismissal may not have been for good cause.

The Chairman: Just a moment. I think the three of us had better talk again.

(Short recess to permit of executive session.)

The Chairman: Are you ready?

Mr. Johnson: Yes, Mr. Chairman.

[fol. 100] The Chairman: Necessarily involved in this evidentiary objection are the questions that this arbitration board will have to decide ultimately in deciding the case, and in ruling on this evidentiary objection we are not in any manner, shape or form to be taken as indicating any final view about the ultimate questions that are involved in the evidentiary objection.

One reason that actuates us to rule as we are going

to rule is a conviction that in arbitration proceedings both parties should as much as possible be permitted to introduce evidence that they feel is necessary to a full presentation of their case, and I for one feel very hesitant about making an evidentiary ruling that would have the sweeping effect that this one would have for fear of denying the party what he would consider to be a fair hearing.

The objection is overruled. Mr. St. Sure and I vote in favor of the ruling and Mr. Heide dissents.

Read the question.

The Reporter: "Question. Now, did you know at the time that you were with the firm that that firm was also attorneys for the Communist Party?"

A. No.

By Mr. Johnson:

Q. Mrs. Walker, when you went to work for the Gerber plant, which was immediately after the experience at the Heinz plant, did you sign an application for employment?

A. I don't recall.

Q. By the way, I said that was "immediately after". [fol. 101] I meant by that it was your next employment. Is that correct?

A. That's correct.

Q. When did you go to the Gerber plant?

A. Well, I think it was a few weeks. I don't remember exactly how long. It wouldn't be more than two or three weeks probably.

Mr. Edises: Just one moment. May I interrupt.

I would like to withdraw from the record of the case the proposed stipulation which was made—

The Chairman: The admission.

Mr. Edises: Yes, the admission which was made on the assumption that the Board would agree with my position.

The Chairman: The admission may be withdrawn. We will strike it from the record.

Mr. Johnson: In other words, it will not appear in the record?

The Chairman: Oh no. You could never strike anything out of one of Mr. Conklin's records.

Mr. Johnson: That is what I want to be clear on. You

mean legally stricken. I inferred the answer that you have made, but I have had some experience with the Industrial Accident Commission where, upon such direction being made, the statements do not appear in the record.

The Chairman: We won't consider it at all when we review the record.

Mr. Edises: It was made merely provisionally in the light of possible consideration taken by the Board.

[fol. 102] The Chairman: We won't consider it at all when we get it finally. But you will never get it off Mr. Conklin's notes or off his transcript.

Mr. Johnson: That is what I inferred, Mr. Chairman.

By Mr. Johnson:

Q. When you went to the Gerber plant, how long did you say you worked there?

A. Four days.

Q. Just four days. And did you join the Union while you were at the Gerber plant?

A. I was already a member of the Union.

Q. You were already a member. Then you went to the Santa Cruz Fruit Packing Company plant?

A. That's right.

Q. Where was that located?

A. In Oakland.

Q. When did you go there?

A. I think it was the first part of April. It was within a week, or at the most two, of the time that I was laid off at Gerber.

Q. And how long did you remain in that plant?

A. Two or three weeks.

Q. And did you sign an application for employment when you went there?

A. I don't recall any.

Q. Now, have you told us about all of the canneries where you worked—

[fol. 103] A. Yes.

Q. —between January of 1946 and October of '46?

A. Yes.

Q. Your next employment was with the FTA, the Food, Tobacco and Agricultural Workers Union?

A. Yes.

Q. When did you go to work for the Union?

A. Within two or three, perhaps four, weeks of the time that I was fired from Santa Cruz.

Q. So that that would have been approximately—

A. May or June of 1946.

Q. I show you a photostatic copy of a document and ask if you have seen the original of that before; if you recognize it.

A. I recognize my signature, so I guess I must have seen it.

Mr. Edises: Well now.—O. K.

A. (continuing) I don't have any independent recollection of it.

By Mr. Johnson:

Q. I call your attention to the fact that in the righthand column on the front of the document under "Starting Date", it says "4/8/46", and on the next line it says "Term.", which I understand to be "Termination", "Date 4/11/46".

A. Yes.

Q. Does that help you in placing this document?

Mr. Edises: Now, just a moment. I object to any questions about the document on the ground that the presumed purpose of the questions is to show that some misrepresentations were made in connection with obtaining other employment. This is the first time that any charge has been made or intimated to my knowledge indicating that any statements on previous application blanks were relied on by the Company in any way in connection with Mrs. Walker's employment. I therefore object to any question concerning employment applications made on previous jobs.

Mr. Johnson: Mr. Chairman?

The Chairman: Just a moment.

It seems to me it is proper cross examination.

This is your signature, isn't it?

The Witness: Yes.

The Chairman: Overruled.

By Mr. Johnson:

Q. Are you able to identify what this is?

A. Well, it looks like it's my job record from Gerber.

Q. I call your attention to another fact: that in the lower lefthand section on the front page of the document, under "Former Experience", it says "Where", and you filled in "H. J. Heinz". That was your last employment before going to Gerber, wasn't it?

A. Yes.

Q. And the April dates of starting and termination correspond with what you said were your dates at Gerber's?

A. I don't think I said exactly what the dates were, but that looks about right.

Q. I call your attention to the fact that the document here in the lefthand section at the bottom of the front page, under "Other (experience)", says "Office work—3 years." Do you note that?

[fol. 105] A. I see it.

Q. Had you in fact performed office work for three years prior to that?

A. Only in the sense that my work as a lawyer might be termed office work.

Q. Other than that there had been no other office work?

A. No.

Q. When you came to Cutter Laboratories and sought work there, who suggested you come there?

I offer this document, Mr. Chairman, at this time, as the Company's exhibit. I think it is No. 1.

Mr. Edises: We will object upon the grounds previously stated in my original objection.

The Chairman: Overruled.

I think this is the first Company exhibit, is it not?

Mr. Johnson: That is right, yes.

The Chairman: Company 1.

(Photostatic copy of application for employment, consisting of two pages with Gerber Products Company was received in evidence and marked Company Exhibit No. 1.)

A. Some friends that I had in the CIO. I don't recall exactly who it was, but somebody I knew who knew about Cutter and the fact that there was a union there and knew that I was looking for work.

By Mr. Johnson:

Q. In other words, someone in the CIO told you that Cutter Laboratories had a CIO union in their plant; is [fol. 106] that right?

A. That's right.

Q. As I understood your testimony this morning, you are interested in union activities; right?

A. Yes.

Q. And, as you said to Mr. Edises, going to Cutter would provide you employment (1) so you could eat and (2) so you could be active in the CIO union?

A. That's right.

Q. So that when you went to Cutter Laboratories one of your purposes for going there was to become active in the union activities?

A. That's correct.

Q. Now, you were employed there about October 11, 1946; is that right?

A. Yes.

Q. In fact you started on October the 10th of '46. Isn't that correct?

A. That sounds correct.

Q. And when did you say you joined the Union?

A. Well, it was several—It was a few months after I went to work. I don't remember exactly when it was. I didn't join right away. Some time elapsed.

Q. You stated this morning it was after your probationary period had expired, wasn't it?

A. As I recall, it was.

[fol. 107] Q. So that in spite of the fact that one of your reasons in going there was to become active in the Union, you did not sign up as a member in the Union until after your probationary period had expired?

A. I wasn't asked to sign up until the time when I did sign up.

Q. Well now, you had previously been active in organizing for the FTA in three canneries, hadn't you?

A. Yes.

Q. And you had previously been a paid organizer for the FTA?

A. That's correct.

Q. Immediately before coming to Cutter's. And your purpose in coming to Cutter's was so that you could become active in the Union?

A. That's right, partially.

Q. And yet you didn't join the Union until after your probationary period had expired?

A. That's correct, as far as I recall. I would have to look at my application card to be perfectly sure.

Q. Could you do that and give us the information here in the morning?

A. If the card can be found in the Union files.

Q. Will you make such an examination and let me know in the morning?

A. With the cooperation of the business agent, I will be glad to.

[fol. 108] Mr. Johnson: I assume we will have that cooperation, Mr. Burke?

Mr. Burke: You will.

By Mr. Johnson:

Q. Now, Mrs. Walker, when you came out to Cutter Laboratories you went to one of the interviewers, didn't you, on the 4th of October 1946?

A. Yes.

Q. And they gave you this original application to fill out?

A. Yes.

Q. That was filled out by you without any assistance from anyone at the plant, wasn't it?

A. Other than the—I believe the request for the two references was made after the application form had been filled out. But substantially that's true.

Q. In other words, the procedure was that they gave you the application blank and you went to a table and sat

down and filled it out, and when you had finished you came back and presented it to one of these interviewers, and she checked it over and asked you for those references?

A. That's correct.

Q. But no one from the Company participated in suggesting or filling out any of the other answers?

A. The only other—That's true except for, I think, the remarks about the degree, with honors in English, and a Phi Beta Kappa. I don't believe I put that down in the first place, as I recall, but that came out in the course of the discussion.

[fol. 109] Q. In other words, after you had filled this out there came up some question about, as the exhibit here says, "Use(ing) other side for additional educational background"; is that right?

A. As I recall, I mentioned during the course of the discussion that I had been a Phi Beta Kappa and "(Was) this relevant?" And I was told that it was, and this was—I scribbled it on the back of the application.

Q. When Mr. Edises asked you this morning if you had received any honors during college you said "Yes", and you enumerated (1) Phi Beta Kappa and (2) that you had been an associate of the California Law Review, which, as you stated, was a form of honors.

A. Yes.

Q. But when you wrote down on the back "Phi Beta Kappa" you did not make any reference to the fact that you had been an editor of the Law Review, did you?

A. No, I did not.

Q. Had you discussed with anyone prior to coming to Cutter Laboratories the question of what you were going to say about your previous experience?

A. No.

Q. Had you discussed with any of your friends in the CIO or any other organization that you belonged to, the question of how you were going to handle this problem of your being an admitted practitioner of the law?

A. No.

Q. Had you discussed the question of how you were [fol. 110] going to handle the Gladstein, Grossman, Sawyer & Edises experience?

A. No.

Q. None of those things had been discussed?

A. No.

Q. Had anyone discussed with you or made any suggestion as to what would be the attitude of Cutter Laboratories if they knew that you had worked for the Gladstein office?

A. No, not specifically.

Q. Had anyone discussed with you the problem of what Cutter Laboratories would do if they knew that you were a lawyer?

A. I don't recall any specific discussion.

Q. Had anyone discussed with you the question of what Cutter Laboratories would probably do if they knew that you had worked for the OPA as an enforcement attorney for \$3200 a year?

A. No.

Q. No mention of that. So that the thought or the belief that if these facts were made known to Cutter Laboratories it would result in your not being employed was entirely your own conception, without having discussed the matter with somebody else?

A. That's correct.

Q. And this question of listing previous experience. Had anyone else discussed that with you?

A. I believe that I had discussed this with somebody: the question of how Cutter's would look upon the camery experience because of my activity as a CIO organizer.

Q. With whom did you discuss that?

[fol. 111] A. Well, the same people that I knew in the CIO.

Q. And what did they say to you?

A. Well, they told me, as I said earlier, that Cutter was an anti-union employer and that I probably would not be hired.

Q. Did you discuss that matter with them shortly before you came out to Cutter Laboratories?

A. Well, yes; a few days or weeks.

Q. And when did you say that your employment with the FTA as an organizer terminated?

A. The end of August or the first part of September.

Q. So that it will be specific, When you filled out this application under the heading "Education:", you knew, did you not, that where they asked for "Name and Location of School (Grammar, High, College)", as indicated on the original of Union Exhibit No. 1, that called for a listing of your experience at the Boalt Hall School of Law?

A. Yes.

Q. And you knew that where it says "From Year to Year", that called for a listing from 1940 to 1942?

A. Yes, yes.

Q. Because those were the years of your study at Boalt Hall?

A. '39 to '42.

Q. '39 to '42. You knew that where it said "Subjects of Specialization, Degrees", your subject of specialization during that period was either law or jurisprudence; right?

A. Yes.

[fol. 112] Q. And I think you said that you received the L.L.B. degree.

A. Yes.

Q. So that you knew that that form specifically called for that information?

A. Yes.

Q. Now, where it said immediately under that "Use other side for additional educational background" and then it follows "(Itemize important courses taken, grades, hours per week and number of weeks devoted to principle", which, if you will note, is spelled wrongly,—

Arbitrator St. Sure: I just noticed it.

By Mr. Johnson:

Q. ——"studies, Honors, etc.)—And being a Phi Beta Kappa, I understand, of course, that you caught that at the time.

A. I didn't until this moment.

Q. All right. It says "Honors". You said that "Principal studies" would have been Jurisprudence, and that "Honors" would have included both Phi Beta Kappa and associate editor or assistant editor of the Law Review; is that right?

A. Yes.

Q. But knowing those facts, you omitted all of the things that I have asked you about?

A. That's correct.

Q. Now coming down to the following statement on Union Exhibit No. 1: "Previous Employment". You will note that it says "(List last position first, put in the dates, and be sure to record your experience.)" Your [fol. 113] last employment, as you testified, had been as an organizer for the ETA.

A. That's correct.

Q. And prior to that your last previous experience had been with the three canneries.

A. Yes.

Q. So that you knew at the time that this question here called for that information; right?

A. Yes.

Q. You also knew that that application called for your experience with the Gladstein-Grossman firm, didn't you?

A. Yes.

Q. And you knew that it called for your experience with the Office of Price Administration?

A. Yes.

Q. Knowing that all of that information, including the nature of the position, the salary and the reason for leaving, was called for, you omitted all of the information as to all of those employers?

A. That's correct.

Q. Now, this name "John Tripp". It is listed there "John Tripp, Att'y". There is no such person; is there?

A. Not as far as I know.

Q. As you stated this morning, you specified that name because you had worked at the OPA under a man by the name of John Tripp McTernan.

[fol. 114] A. Correct.

Q. Now, when you listed there as one of your recommendations Francis McTernan, what is the relationship, if you know, between John Tripp McTernan and Francis McTernan?

A. They are brothers.

The Chairman: Is John the one who was connected with the National Labor Relations Board here?

Mr. Edises: Yes. He was connected with the National Labor Relations Board, likewise with the Office of Price Administration.

By Mr. Johnson:

Q. Now, Mr. John Tripp McTernan has also been associated with Mr. Margolis, hasn't he, in law practice in Los Angeles?

A. Yes, yes.

Q. Mr. Margolis at one time was associated with the Gladstein-Grossman firm here in San Francisco, wasn't he?

A. Yes.

Q. That is the same Mr. Margolis?

A. Yes.

Q. And at the time that you filled this application out in October 1946, wasn't Mr. McTernan then associated in Los Angeles with the Margolis firm?

A. I don't remember. I don't recall.

Q. This Francis McTernan, attorney, at 57 Post Street. I hand you a letter here dated October 18 1946 on the letterhead of Dreyfus & McTernan, Attorneys at Law, 57 Post Street, San Francisco 4, addressed to Cutter Laboratories, attention A. K. Beckley, Vice-President. You have [fol. 115] seen that letter before, haven't you?

A. I saw it for the first time at the Unemployment Insurance hearing with regard to my disqualification.

Q. And this is the man whom you gave as a reference to Cutter Laboratories?

A. Yes.

Q. Now, Mr. McTernan— You had discussed—

Mr. Edises: Mrs. Walker, I believe.

Mr. Johnson: Yes, but I am asking about Mr. McTernan.

By Mr. Johnson:

Q. Mr. Francis McTernan had discussed with you at various times while you were at the OPA legal matters, hadn't he?

A. Francis McTernan?

Q. Yes.

A. I don't recall any.

Q. Well, he knew that you were a lawyer there under his brother, didn't he?

A. Yes.

Q. He did know that. And he had been in to the office there a number of times when you were in the legal department, hadn't he?

A. No.

Q. You had never seen him there?

A. No.

Q. But he did know that you were an attorney?

A. Yes.

[fol. 116] Q. How long had you known him?

A. Since I state there: some time in 1942.

Mr. Johnson: I offer this document, Mr. Chairman, as Company's Exhibit No. 2.

The Chairman: Company 2.

(Photostatic copy of letter dated October 18, 1946 to Cutter Laboratories from Francis J. McTernan, Jr. was received in evidence and marked Company Exhibit No. 2.)

The Chairman: Let me have the original of this application form which is Union Exhibit No. 1. I don't want to substitute it for the photostat here.

Mr. Johnson: We don't have the original.

The Chairman: No. Union Exhibit 1.

Mr. Johnson: Can that be withdrawn and can the photostat be accepted, unless you have some particular reason for it? This is an official record.

The Chairman: I understand that, but I would rather have the original here. They can be withdrawn after the case is over.

Mr. Johnson: With that stipulation, we will gladly offer it.

The Chairman: They can all be withdrawn after the case is over. One reason I want it is that there are some things that the photostat does not reflect.

By Mr. Johnson:

Q. Now, Mrs. Walker, I hand you a letter (I only have two copies of this, I am sorry) over the heading of Cutter Laboratories addressed to Dr. William R. Berke, 316 Sutter Street, San Francisco, California. You will note that on [fol. 117] the righthand side there appear the initials "W.R.B." following this inscription: "I am sure that this applicant would be an asset to any organization" and also that certain other questions have been filled in in handwriting. Is that the Dr. William R. Berke, Dentist, that you listed as a reference in your application?

A. Yes.

Q. By the way, is that gentleman to your knowledge a relative of the Mr. Berke, also spelled B-e-r-k-e, who represented the FTA in the hearing at which you said you testified before the National Labor Relations Board?

A. Not to my knowledge.

Q. He isn't?

A. I never heard of such a thing.

Q. How long had you known this Dr. Berke?

A. Oh, since sometime in 1942, I guess.

Q. Yes. So that that would be about the time that you were graduated from Boalt Hall and admitted to The Bar?

A. Yes.

Q. Dr. Berke knew that you were a lawyer, didn't he?

A. I believe he did.

Q. He knew that you worked for the OPA, didn't he?

A. I really couldn't say. As he says, we knew each other socially, and I don't remember now how much he knew about what I was doing for a living and how much he didn't know.

Mr. Johnson: I offer this in evidence as the next exhibit, Mr. Chairman.

[fol. 118] The Chairman: Company Exhibit 3.

(Photostatic copy of letter from Cutter Laboratories to Dr. William R. Berke dated October 15 1946 was received in evidence and marked Company Exhibit No. 3.)

By Mr. Johnson:

Q. I call your attention to the fact that in Dr. Berke's letter, the letter that he sent back to the Company, where it says "In what capacity?" immediately after the question "How long has this applicant been known by you?" he has stated "Socially—mutual friends". Did you communicate with him after going to Cutter Laboratories and filling out that application and ask him not to advise the Company of your legal status as a lawyer?

A. I don't remember whether I asked him to do that. I did call him and tell him I had given his name as a reference.

Q. You did call and tell him that?

A. I did tell him.

Q. Did you ask him after October 4 not to disclose to Cutter Laboratories, if he heard from them, that you had worked for the OPA?

A. I don't recall doing that.

Q. Do you recall any discussion with him about what previous experience you had listed with your application?

A. I don't specifically recall it. It's possible that I did have such a discussion with him. Because, as I have said earlier, I didn't want the Company to know. But I don't specifically recall any conversation.

Q. Now calling your attention to the letter from Mr. [fol. 119] McTernan which has been introduced here as Company's Exhibit No. 1, dated October 18, I call your attention to the fact that he states "I have known Mrs. Walker, as a friend, since approximately 1942". Did you communicate with him after you filed your application with the Company?

A. Yes.

Q. Did you ask him not to disclose that you were a lawyer?

A. The same thing I said about Dr. Berke applies to him. I may have done so but I don't recall now any detail of my conversation with him.

Q. Did you tell him that you had concealed certain facts as to your education and previous experience?

A. I believe I did.

Q. You did tell him that?

A. I believe so.

Q. You stated that your reason for concealing your educational qualifications and your experience was that (1) you needed the job. Is that right?

A. That's right.

Q. And (2) you said that you knew that if you gave that information, the Company would not employ you?

A. That's right.

Q. So that your purpose, then, in making these concealments and in stating an individual as your employer who did not exist was for the express purpose of misleading the Company, was it?

A. Yes.

[fol. 120] Mr. Edises: Just a moment: That question has been asked and answered several times. In addition it is calling for her conclusion. She has told what her purpose was specifically and in detail.

The Chairman: Well, it is cross examination. And as far as the conclusion is concerned, I guess she can express a conclusion about her own state of mind.

Overruled.

A. (continuing) Yes.

By Mr. Johnson:

Q. And your reason for not giving the Company the information was because you knew that if they had the information under "Experience and Qualification", they would be able to trace your past experience.

Mr. Edises: That is objected to as having been already asked and answered.

The Chairman: Overruled.

A. Well, that was part of the reason.

By Mr. Johnson:

Q. What was the rest of it?

A. The rest of it was that I was convinced that they wouldn't hire me.

Q. I see. So that, as you expressed then, your purpose or motive in making these concealments and misrepresentations

sentations was because you knew that if you told the truth they wouldn't hire you?

A. That's correct.

Q. Now, did you have any other purpose in making those misrepresentations?

[fol. 121] A. No.

Q. Mrs. Walker, are you now or have you ever been a member of the Communist Party?

Mr. Edises: Just a moment. I object to that on all of the grounds previously stated; on the additional ground that this question was never asked of the Petitioner here at any time during her employment history. In other words, the question of her views on whether she was a member of the Communist Party or not was not important enough for this Company to ask. They didn't have the decency or courtesy to ask her that question while she was in their employ. In other words, if they regarded it as irrelevant at that time, it obviously did not enter into their determination which was reached independently of her position on that question. For that reason it is irrelevant in the present proceeding.

I would like to add further that this body is not a court to try the question of whether Mrs. Walker is a Communist. If being a Communist constitutes a crime, then there are tribunals where the matter may properly be litigated. We have already made a concession with regard to this issue. I am willing to renew that offer at this time. But I do not wish to be party to putting Mrs. Walker into a position where she has to answer that question either "Yes" or "No".

The Chairman: Well, we have already indicated how we will rule on this question.

Mr. Edises: That was on a collateral issue, —

[fol. 122] The Chairman: I know, but —

Mr. Edises: —Mr. Chairman, where the matter was not directly stated.

The Chairman: Well, it is essentially the same problem, unless you think you want to be heard further on this.

Mr. Edises: Well, I want to state my objection. I also wish to have an opportunity to consult with Mrs. Walker, —

The Chairman: All right.

Mr. Edises: —in the event that my objection is overruled.
 Arbitrator Heide: I would like an opportunity to consult
 with the other members of the Board. —

The Chairman: All right.

Arbitrator Heide: —before you make a ruling.

The Chairman: All right. We will take a five-minute
 recess.

Mr. Edises: May I say one further thing on the record
 before we go out.

I think that the Board cannot free itself from the duty of
 doing equity in this situation. That means that it has on
 the one hand to consider the exigencies of proof, the prob-
 lems of proof, what is to be elicited, the value of what is to
 be elicited, against the possible harm to the individual
 concerned.

Now, we are not "babes in the woods". We know that
 if by chance this woman should be a member of the Com-
 munist Party and answers that question "Yes", then she
 [fol. 123] suffers the consequence of economic death. There
 is no question that that is true. If she should be a member
 of the Communist Party and answers that question "No",
 she subjects herself to the penalties of perjury.

Now, it may be a pleasant and interesting game for coun-
 sel to play, but the question cannot be severed from the
 matter of the consequences to the party involved. And I
 think that these are matters that the Board should take into
 consideration as well as the strict legal aspect.

(Short recess to permit of executive session.)

The Chairman: We have come to a conclusion: that we
 consider the question to be material. The objection is over-
 ruled, but we want to couple the ruling with a statement of
 the Board: that we will not instruct the witness to answer
 if she does not care to answer the question, and she is at
 liberty to answer it or not to answer it as she chooses. If
 she should refuse, her refusal to answer will stand in the
 record and, as in any case, the failure of a party to produce
 evidence justifies the fact-finding board in drawing infer-
 ences from it. What inference we will draw from the refusal
 we have not determined now and we will let that await final
 determination of the case.

Do you want to answer the question?

The Witness: No, I do not, Mr. Arbitrator.

The Chairman: All right.

Mr. Edises: Do you wish to explain your reasons for refusing to answer?

The Witness: Yes. It's very simple. I consider it a [fol. 124] question of an absolutely unwarranted invasion into my private beliefs, and I know that it is nothing but a—the whole question is nothing but a red herring to obscure the real issue in the case.

Arbitrator St. Sure: It seems to me that if we are going to get into questions of argument, maybe the ruling ought to be somewhat different. I think that the statement of the Chairman of the Board that we will not require the question to be answered ought to suffice without having something which might become a little heated from the point of view of "red herrings" and arguments of that kind that I do not think are involved at this juncture. Do you?

The Chairman: Well, I think that what the witness has said here is something that you are going to argue.

Arbitrator Heide: It seems to me that if the panel is going to draw any inferences from the position of the witness in respect to the question and if the witness wants to say anything in respect to it, she should be allowed to say it.

Arbitrator St. Sure: My only point is this: That is something that I take it under the ruling will not be subject to cross examination; that if she is then examined or cross examined on the basis of her refusal, we are going to be right back where we were.

The Chairman: Have you finished?

The Witness: I could say a whole lot more on the issue because it is an issue that I feel very deeply about.

The Chairman: I am not talking about what your views [fol. 125] on the issue are. The question that you were asked was to state what your reasons for the refusal are.

The Witness: My reason is that I think it is an invasion of my right to my personal political beliefs.

Mr. Johnson: Mr. Chairman, if the witness has completed her answer, I would move that the voluntary statement with respect to her considering this whole matter to be a "red herring" be stricken from the record.

In support of my motion I would point out, only at reasonable length, that I realize you are trying to feel your way in a very fair manner on this important issue. I would point out to you respectfully that your qualification has in some degree removed from us the usual protection of the law, in that if a witness refuses to answer a question of this type the hearing officer instructs the witness to answer and then the process of the law steps in. In an arbitration, for instance, we would be able to certify this issue to the Superior Court, where a final decision on this issue might be made. And I would think that normally that would be helpful to you gentlemen. If you have serious doubts about this (apparently you do), you would want to use that method of getting it before a court as quickly and as expeditiously as possible. An essential element of getting the matter into court is the direction by the hearing officer, following the instruction by the attorney in the refusal. That has been removed from us so that we do not have one of the implements of law, and to some degree we are at the mercy (not [fol. 126] entirely so but to some degree) of these experienced people who have given this considerable thought and have these speeches at the tip of their tongue. So to stop that precedent from being established, I would move that the volunteer statement of the witness be stricken from the record.

Mr. Edises: Mr. Chairman, may I be heard briefly on that.

In view of the statement of the Board that not only will they not insist on her answering but they will draw whatever legal consequences they are entitled to draw from her refusal to answer—

The Chairman: Not "legal consequences". I said "inferences".

Mr. Edises: Inferences. I am sorry.

(Continuing) —inferences they may be entitled to draw from her refusal to answer, I think that she has a right to explain the basis of her reason. And that is all that she has done.

I think that Mr. Johnson has apparently some difficulty in understanding that possibly the Board had some consideration for the complainant here in reaching its conclusion and

that it was not motivated precisely by his motivations: namely, a desire to get it into court and have her compelled to answer, and then if she does not answer, thrown into jail for contempt.

The Chairman: We took into consideration both the things that you have mentioned and *the things that you have mentioned*. There is one portion of the answer of the witness that I think may go out.

Will you read the answer to Mr. Edises' question, not the [fol. 127] one of mine.

The Reporter: "The Witness: Yes. It's very simple. I consider it a question of an absolutely unwarranted invasion into my private beliefs, and I know that it is nothing but a—the whole question is nothing but a red herring to obscure the real issue in the case."

The Chairman: All right. The latter portion will apply. The remark about the "red herring" is stricken as argumentative. The balance of the answer will stand.

Now, have you anything further?

The Witness: No.

The Chairman: All right.

By Mr. Johnson:

Q. Mrs. Walker, are you now or have you ever been a member of the Federal Workers Branch in the Professional Section of the Communist Party?

The Chairman: All right. Now, have you got a whole string of these things that you want to ask?

Mr. Johnson: Yes, I have. Not "a whole string". There are a number of them.

The Chairman: I mean, Have you a lot of similar questions? Let's get them all off our chest at once here, because you are going to get the same refusal here and the same ruling from us.

Mr. Johnson: Yes. And the way I understand the procedure (I do not know where eventually you are going to go, and again I say that you are trying to be fair in protecting both sides) in matters particularly before hearing [fol. 128] officers and arbitrators, where there is a possibility of eventually going to court, is that it is necessary, without a lot of argument, to ask each question.

The Chairman: All right. That is what I am getting at. Are you ringing changes on the questions that you have just asked? If you have about a dozen of those, let's have them all at once and then we will pass on to something else.

Mr. Johnson: Doesn't the law require a specific answer to each one?

The Chairman: We will cover that by stipulation when we get through. I mean, I don't want to go through the entire procedure of objections and refusals. I think you have about nine of them there.

Mr. Johnson: Do you think that the law makes it possible for us to do what you seriously suggest?

The Chairman: How many questions have you got that ring changes on this same question?

Mr. Johnson: About a dozen.

The Chairman: About a dozen. Well, when you get all through we will get the same objection from Mr. Edises, I presume, and the same answer from the witness and the same ruling from the Board here. So go ahead and ask all twelve questions, and we will deal with them all at once.

Mr. Johnson: Could I not ask each one, then have him make the objection and her the answer?

The Chairman: That is what I am trying to do. I am trying to save a little time. Because you are going to get the [Fed. 129] same objection, the same ruling.

Mr. Johnson: Will you do it individually to each one instead of making me ask twelve? I do not think legally that we have the right to do that.

Mr. Edises: We will stipulate that you may ask them all together.

The Chairman: If you want to do it individually.

Mr. Johnson: Yes. I won't prolong it.

By Mr. Johnson:

Q. The question I ask you now is: Have you ever been a member of the Federal Workers Branch in the Professional Section of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling, and the same instruction to the witness: that she doesn't have to answer it if she

does not care to answer the question, and she is at liberty to answer it or not to answer it as she chooses. And I presume that the witness will give the same reason for her refusal to answer.

The Witness: That's correct.

By Mr. Johnson:

Q. The next question is this: Are you now or have you ever been a member of the Professional Section of the Communist Party?

The Chairman: The same objection?

Mr. Edises: The same objection.

The Chairman: The same ruling, the same answer from the witness, the same instruction from the Board to the witness, and the same answer of the witness as to her reasons.

[fol. 130] Mr. Johnson: Does the record show that the witness said "Same answer"?

The Witness: The same answer.

By Mr. Johnson:

Q. The next question: Are you now or have you ever been a member of the South Side Club of the Professional Section of the Communist Party?

The Chairman: The same objection?

Mr. Edises: The same objection.

The Chairman: The same answer from the witness?

The Witness: The same answer.

The Chairman: The same instruction and the same reason given.

By Mr. Johnson:

Q. Next question: Were you ever either nominated, appointed or elected to be Membership Director of the Professional Section of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling.

You can just repeat what I have said here before.

The Witness: The same answer.

Mr. Johnson: The same ruling, Mr. Chairman?

The Chairman: The same ruling.

By Mr. Johnson:

Q. Were you ever nominated, appointed or elected to be Chairman of the Labor Committee of the Professional Section of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same statement from the Chairman [fol. 131] of the Board.

The Witness: The same answer.

By Mr. Johnson:

Q. Are you now or have you ever been a member of the Sunset Club of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same statement from the Board.

The Witness: The same answer.

The Chairman: The same statement from the Board and the same ruling.

By Mr. Johnson:

Q. Were you ever nominated, appointed or elected to be Educational Director of the Sunset Club of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same answer?

The Witness: The same answer.

The Chairman: The same statement from the Board and the same ruling.

By Mr. Johnson:

Q. Are you now or have you ever been a member of either the Cannery Club or the Cannery Workers Club of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same statement and ruling from the Board.

The Witness: The same answer.

By Mr. Johnson:

Q. Are you now or have you ever been a member of the Berkeley Section of the Communist Party?

Mr. Edises: The same objection.

[fol. 132] The Chairman: The same ruling and the same statement from the Board.

The Witness: The same answer.

By Mr. Johnson:

Q. Mrs. Walker, on July 14, 1944, did you attend a meeting at 587 San Bruno Avenue in San Francisco?

Mr. Edises: The same objection.

The Chairman: The same ruling and statement from the Board.

The Witness: The same answer.

Mr. Johnson: What could possibly be the objection to that question on that ground, Mr. Chairman? I merely asked her—

The Chairman: What is the materiality of the question?

Mr. Johnson: I merely asked her if on a certain date she attended a meeting at 587 San Bruno Avenue in San Francisco.

The Chairman: What is the materiality?

Mr. Johnson: It is preliminary.

The Chairman: To what?

Mr. Johnson: To a question of what the meeting was. It is on this issue. There is no question about that.

The Chairman: That is what I am getting at.

— Mr. Johnson: But I didn't understand that preliminary questions could be handled in that way. When I come to the meat of it I think your rulings would apply.

The Chairman: I would like to know where you are going when you are asking questions—even preliminary questions.

Mr. Edises: As long as it is part of the same issue we will make the same objection.

[fol. 133] The Chairman: The same ruling.

She already has said "The same answer".

The Witness: The same answer.

By Mr. Johnson:

Q. Now, Mrs. Walker, do you know what 587 San Bruno Avenue was on July 14 1944?

Mr. Edises: What is the materiality?

Mr. Johnson: It is directed toward the same issue.

Mr. Edises: We make the same objection.

The Chairman: The same ruling and statement from the Board.

The Witness: The same answer.

By Mr. Johnson:

Q. Isn't it true that on July 14 1944 Mr. Bertram Edises lived at 587 San Bruno Avenue in San Francisco?

Mr. Edises: Is this on the same issue?

Mr. Johnson: The same issue.

Mr. Edises: The same objection.

The Chairman: The same ruling and statement from the Board.

The Witness: The same answer.

By Mr. Johnson:

Q. Do you know as a fact, Mrs. Walker, —
May we take just a brief recess for a minute or two.

The Chairman: If you take too long you are going to lose Brother Heide here.

Mr. Johnson: This is just going to be a minute while we look at a document here.

The Chairman: However, I neglected to state for the record that Mr. Heide dissents from the rulings that the Board made. At least he dissents from the portion of the ruling —

[fol. 134] Arbitrator Heide? A portion.

The Chairman: —that rules that the question was material.

Mr. Johnson: Could I ask another question, on the record, of course, while we have this recess.

Are you reserving the right to change your mind later in the hearing on the question of instructing the witness, or have you decided that with finality?

The Chairman: No, no. As far as I am concerned, my mind is never final until I sign an award. But I wouldn't open the subject up unless you made a motion at the close of the case. My mind doesn't close that fast.

By Mr. Johnson:

Q. Mrs. Walker, do you know as a matter of fact that on July 14 1944 Mr. Bertram Edises was an alternate member on the Communist Political Association of California?

Mr. Edises: The same objection. And the further objection of immateriality and irrelevancy.

Mr. Johnson: It is linked in with the other questions, Mr. Chairman.

The Chairman: The same ruling. The same statement.

Mr. Edises: I didn't realize that I was on trial here, but apparently I am.

By Mr. Johnson:

Q. I show you here an issue of a paper known as the People's World for Wednesday, June 14 1944; and I call your attention to an article in the second column on page 4 entitled "Communists Elect State Committee". It is dated San Francisco June 13, and it reads as follows: "The [fol. 135] newly formed California state organization of the Communist Political Association concluded its first convention last weekend with the election of the following officers: President, William Schneiderman;" (It is spelled wrong: the "n" is missing after the "h"). Vice-Presidents, Anita Whitney and Pettis Perry; Secretary, Louise Todd; Treasurer, Leo Baroway. A State Committee was elected which, in addition to the officers, included the following members and alternates: . . . "

I call your attention that under "alternates" is listed the name "Bertram Edises". I ask you if you ever saw that document about the time that it was issued.

Mr. Edises: The same objection.

The Chairman: What is the materiality of this?

Mr. Johnson: The materiality, Mr. Chairman, is that I am attempting to examine this witness as to whether

or not on July 14 1944 she attended a meeting at 587 San Bruno Avenue in San Francisco, which was the home of Mr. Bertram Edises, who was then an alternate to the State Committee of the Communist Political Association. And my next question is, What was that meeting?

Mr. Edises: You know, this is more or less irrelevant to the issues but I question very seriously counsel's good faith in this matter. It seems to me that what he is doing is attempting to blacken the character of counsel on a very specious and tenuous theory that if I had something in my political past of which he disapproves, the fact that I am now representing her in some way relates to her.

[fol. 136] Now, possibly counsel has some different purpose in mind, but I have observed counsel in action for some time and I think that I am entitled to state my belief. I question his good faith in the matter.

So I simply want to throw that in in addition to the other objection I made previously.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Isn't it true, Mrs. Walker, that on the day referred to, namely, July 14 1944, at the address referred to, you attended a meeting of the South Side Club of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. On August 25 1944 did you attend another meeting at that same address, 587 San Bruno Avenue, San Francisco?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. On that date, namely, August 25 1944, isn't it true that you attended at that address, 587 San Bruno Avenue,

a meeting of the South Side Communist Club of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

[fol. 137] By Mr. Johnson:

Q. At the first meeting about which I have asked you, namely, July 14 1944, and at the meeting referred to and at the home referred to, isn't it true that you were nominated, appointed or elected to the position of Executive Secretary of either the Sunset Club or the Professional Section of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. At the second meeting about which I have asked you, namely, August 25 1944, at a meeting at the home referred to, isn't it true that you were nominated, appointed or elected a delegate to the State Convention of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Now, Mrs. Walker, this morning counsel asked you at length about your various—

Mr. Chairman, may I offer for identification the newspaper article which I gave to you, being the—

The Chairman: Well, I don't like to mark things for identification. Either offer it in evidence or—

Mr. Johnson: Your ruling has apparently taken care of me on that issue.

The Chairman: No, no, no.

Mr. Edises: Then why is counsel seeking to accomplish [fol. 138] it by the back door?

The Chairman: I don't see that you have laid any foundation for it that would justify its being marked for identification. You haven't any answer about it.

Mr. Johnson: At this time let the record show that I have offered to present for identification a photostatic copy of the issue of the People's World for June 14 1944 setting forth on page 4, column 2, the article about which I questioned Mrs. Walker.

By Mr. Johnson:

Q. Now, Mrs. Walker, counsel asked you this morning about your various positions and offices in Local 225 of the United Office and Professional Workers of America. You didn't mention, did you, the fact that you had also held the office of President of that Union?

A. No, I didn't. I remembered it after the noon recess. I just forgot all about it.

Q. I see. Now could I ask you whether or not at any time when you were President of that Local, the Local had qualified under and filed the affidavits required for qualification under the Labor-Management Relations Act of 1947?

A. No.

Mr. Edises: That is objected to as immaterial.

Don't answer until I make an objection.

The Witness: I am sorry.

The Chairman: What is the materiality?

Mr. Johnson: It is a preliminary to tying in certain dates with respect to her service and with respect to certain acts concerning the issue of Communism.

Mr. Edises: We make the same objection.

Mr. Johnson: It is not a question of whether she is directly a member of the Communist Party, but it does relate to that, Mr. Chairman. I want to state that frankly.

Mr. Edises: Counsel hasn't stated any ground which would make it relevant. If he is leading up to the point that the Local did not at that time file affidavits under the Taft-Hartley Act, I don't see its relevancy.

Mr. Johnson: It is cross examination, Mr. Chairman, and it is offered for impeachment and other such purposes.

The Chairman: Overruled.

Did you answer the question?

The Witness: The answer was—

Mr. Edises: I think she had an answer in before I could make the objection.

The Chairman: I think she did. She said, No.

By Mr. Johnson:

Q: Now, when were you elected President of the Union?

A: In the spring of 1949.

Q: And did you eventually resign as President of the Union?

A: No.

Q: Did your term expire?

A: Yes.

Q: When did your term expire?

A: Upon adoption of new by-laws by the Union.

[fol. 140] Q: When was that?

A: In—I don't know. Sometime late in the fall of 1949. Sometime after my discharge.

Q: Now, I show you here a bulletin of Local 225 dated January 13 1950. Are you familiar with that?

A: I don't remember ever seeing it before.

Q: I call your attention that in the lefthand column it says "Local Elects New Officers" and reads as follows: "Mabel ('Pinkey') Black was elected Local 225 President and T. Y. Wulff was elected Secretary-Treasurer of the Local at the last membership meeting, December 15. 'Pinkey' is employed at Bear Photo Service. 'Ty' works at Cutter Lab. Outgoing President Doris Walker, who declined to be a candidate for re-election, was given a vote of thanks for her past services as union officer."

That is a correct statement, isn't it?

A: Yes.

Mr. Edises: Just a moment.

I will object to that form of questioning. She stated that she does not identify the document. Now, I don't believe that he has established a basis for questioning her about it.

The Chairman: He read from the document and then asked her whether that is a correct statement or not, and

she says "Yes". It doesn't involve the document, it seems to me, yet.

By Mr. Johnson:

Q. Well, specifically (and I am coming to this, Mr. Chairman) the date when the new officers were elected was December 15 1949?

[fol. 141] A. That sounds right. I don't remember specifically.

Q. Now I call your attention to the fact that in the adjoining column is an article "Local Complies With Taft-Hartley", stating as follows: "On December 23rd the Union was notified by the NLRB that Local 225 is in compliance with Section 9(f), (g) and (h) of the Taft-Hartley Act and can now use the services of the NLRB if it so desires. Section 9(f) and (g) requires the filing with the United States Department of Labor the Union's financial report, constitution and by-laws. Section 9(h) requires the filing of non-Communist affidavits by the officers of the Local with the NLRB. The necessary papers and affidavits were filed with the NLRB on December 16 in accordance with the vote of the membership".

Mr. Edises: Now, just a moment. I want to— Well, go ahead. I didn't mean to interrupt your question.

By Mr. Johnson:

Q. Now, do you know of your own knowledge that on December 16, namely, the day after you went out of office as President, the affidavits referred to were signed by the new officers and filed with the NLRB?

A. No.

Mr. Edises: Just a moment, please. Let me get my objection in.

I object to the question as complex. If he wishes to ask the direct question, let him do it. But he is utilizing a document which has not been identified for the purpose of framing his questions.

The Chairman: Well, he has been reading off some pieces [fol. 142] of scratch paper in front of him here too. I don't see any objection to that question.

Overruled.

Your answer is, "No".

By Mr. Johnson:

Q. Mrs. Walker, I hand you this document from which I have been reading. You know, do you, that that is a copy of the bulletin of Local 225, issued under date of January 13 1950?

A. I don't know. I never saw it before.

Q. You never saw it?

A. No.

Q. You don't recognize this document which says "Published by the United Office and Professional Workers of America, Local 225, 160 Grand Avenue, Oakland, HIgate 4-1783, publication deadline, second Tuesday of the month"?

Mr. Edises: Just a moment now.

I object to that. Counsel in his devious way is gradually getting the entire document into evidence. I object to the question.

Mr. Johnson: I hadn't finished.

The Chairman: What is the question?

By Mr. Johnson:

Q. The question is, You do recognize the document that I have handed to you with that heading as being a copy of the Local Union's bulletin, don't you?

A. Mr. Johnson, it looks like that's what it is, but I never saw the thing before. That's all I can tell you. Or at least to the best of my recollection I never saw it [fol. 143] before. I don't see everything that the Local Union issues.

Mr. Johnson: I would like to offer this document at this time for identification, Mr. Chairman.

Mr. Edises: Well, it hasn't been identified.

The Chairman: Why don't you just hold it. It is plain what you have been referring to. As I said a minute ago, either offer it in evidence or withdraw it. I don't like to mark exhibits for identification.

Mr. Johnson: I offer it in evidence as the Company's exhibit next in order.

The Chairman: Is there any objection?

Mr. Edises: Yes. We object upon the ground that no proper foundation has been established. The document has not been identified.

The Chairman: The objection seems to be good.

Mr. Johnson: I ask that it be marked for identification. I agree with your idea, but I will say that in a lengthy hearing, unless we have them identified by number, there is confusion.

The Chairman: Are you still a member of this Local?

The Witness: Yes.

The Chairman: Do you get bulletins like this?

The Witness: No, not through the mail.

The Chairman: It seems to me that we are sparring around here about something that is not of much consequence.

Mr. Edises: Well, let me examine it.

[fol. 144] The Chairman: Take a look at it.

Mr. Edises: Perhaps I can—

The Chairman: Isn't there somebody down there who knows whether that is a fabrication or not? I suppose what Mr. Johnson is trying to do here is save himself a lot of trouble and prove the facts that are stated in that thing about when these affidavits were filed and that a period of time passed when they weren't filed. What is the fact of the matter?

Mr. Edises: Well, it is always possible that there might be an innocent explanation for what Mr. Johnson does, but I want to satisfy myself as to the authenticity of the document.

Mr. Burke: May we go off the record?

The Chairman: No, you can't go off the record.

But that is apparently what he is driving at.

What is the purpose of offering the pamphlet? To prove those facts?

Mr. Johnson: That's all. The business agent of the Union is here, Mr. Chairman—Mr. Wulff—who is referred to there.

The Chairman: Will you withdraw the offer if a stipulation could be entered into covering just those facts?

That is what he says he is offering it for.

Mr. Burke: Yes, but I will have to read the whole thing.

The Chairman: No. He says that he will withdraw the document if you say that under the Labor-Management Relations Act the affidavits were not filed and then they were filed.

Mr. Edises: I can't understand why counsel doesn't ask [fol. 145] the question.

Mr. Johnson: Certainly I will withdraw the question if they stipulate. I thought this was the easier way to get at it, because she said that she didn't remember the dates. I don't want to fuss around with this document. It seems perfectly obvious as to what it is.

The Chairman: I still say that I don't want to take the document for identification. It is not a proper part of the cross examination. You didn't elicit anything from the witness that qualifies that document for admission.

Mr. Edises: State the—

The Chairman: He doesn't want the whole bulletin to go in. He is trying to prove facts about the filing of the affidavits, as I understand.

Mr. Edises: State the fact that you want to go into the record and perhaps we can stipulate to it.

Mr. Johnson: Mr. Chairman, the facts that I desire to prove, and in support of which I offered this document, are these: to show that on December 15, 1949 the term of office of Doris Walker as President of Local Union 225 was terminated; that on that date a new President was elected and Doris Walker ceased to be an officer of the Local Union; that on the next day, namely, December 16, 1949, the new officers, including the new President who had taken Mrs. Walker's place, filed the affidavits required by Sections 9(f), (g) and (h) of the Labor-Management Relations Act of 1947 and qualified for the services of the National Labor Relations Board.

[fols. 146-151] The Chairman: If you want to; if you are not prepared to stipulate to those facts—

Mr. Edises: As far as the facts are concerned, I am in a position to indicate whether they are accurate or not, but I have an objection to the relevancy.

The Chairman: The one you stated a minute ago? Immateriality? And what else?

Mr. Edises: Yes.

The Chairman: What else?

Mr. Edises: Remote; having no tendency to prove in a direct way any issues in the case.

The Chairman: The objections are overruled.

Mr. Johnson: On that stipulation, I now withdraw any reference to the document and don't desire to encumber the record with having it marked for identification.

[fol. 152]

PROCEEDINGS

The Chairman: Are you ready?

Mr. Edises: Yes, Mr. Chairman.

Mr. Johnson: Mr. Chairman, if we may continue with the cross examination of Mrs. Walker.

The Chairman: Yes.

DORIS WALKER, the witness on the stand at the time of adjournment, resumed the stand and further testified as follows:

Cross-examination (Continued).

By Mr. Johnson:

Q. Mrs. Walker, I think you said yesterday that you would check the union records to find out the date when you joined the Union. Do you have that available now?

Mr. Edises: Yes, we now have that available.

By Mr. Johnson:

Q. May I ask what the date is?

A. November 4, 1946.

Mr. Johnson: May I see the document you are looking at.

By Mr. Johnson:

Q. So on that date, November 4, 1946, you first joined Local 225 of the United Office and Professional Workers of America?

A. Yes.

Q. And that was less than a month after you were first employed at Cutter Laboratories?

A. That's right.

Q. In 1949, particularly during the months of July and August, were you a subscriber to a newspaper known as the "Labor Herald"?

[fol. 153] Mr. Edises: Just a moment. That is objected to as immaterial.

The Chairman: What is the relevance?

Mr. Johnson: It is purely preliminary, Mr. Chairman, for the purpose of bringing out the witness's knowledge of certain pertinent documentary evidence which is not relating, may I say, to this Communist issue at all.

The Chairman: Overruled.

A. I may have received the paper as an officer of the Union. I was not a subscriber.

By Mr. Johnson:

Q. Did you read the issue of the "Labor Herald" for [fol. 154] August 23, 1949?

A. I don't remember.

Q. I show you here what purports to be a portion of page 2 of the "Labor Herald" issue for August 23, 1949 and ask if you ever saw that document.

A. Yes, I did.

Q. When did you first see it?

A. When it was issued.

Q. In other words, on August—

A. When I received the paper in my home.

Q. Now I call your attention to the fact that in this article here there is a statement that "FTA "

The Chairman: Just a second now.

Do you want to see this document?

Mr. Edises: Yes, I do.

The Chairman: Well, take a look at it.

Mr. Johnson: By the way, Mr. Chairman, if I may interject, our friend Mr. Moon is not here this morning and I am

not entirely familiar with the ground rules. I assume that in his absence the copies which we have been handing to you as Chairman will be marked and become the official exhibits for the file.

The Chairman: Yes, that's right.

To which article now are you referring?

Mr. Johnson: I am referring to the one in the left hand column entitled "Fired cannery workers to share \$205,000 NLRB back pay award."

[fol. 155] By Mr. Johnson:

Q. If you will examine that article, Mrs. Walker, I call your attention to the fact that the fourth paragraph from the bottom states: "FTA also objects to the firing of Doris Walker from one of the canneries because she refused to answer the question, 'Are you a Communist?'" Then the next paragraph states: "The company claimed she was fired for her political beliefs and the NLRB sustained the company, declaring there was a precedent for such action in a previous firing of another company in a different strike. If FTA accepts the settlement it will reserve the right to continue fighting for back pay for Doris Walker and the Mar-Pak cannery workers."

Now, on August 23, 1949 did you read that portion of that article?

A. Well, I don't recall on what day I read it, but at that time.

Mr. Johnson: Yes.

I would ask that the article be introduced as the Company exhibit next in order.

Mr. Edises: That is objected to as irrelevant, incompetent and immaterial.

Mr. Johnson: I may say, Mr. Chairman, so that your record and your rulings will be clear, that my purpose in introducing this document at this time is to lay a foundation for the purpose of establishing the time at which the Company became aware of and was able to establish proof that this lady was a Communist, that being one of the issues which the Union has raised: that we knew about it [fols. 156-157] for many years and did nothing about it. This is preliminary to that and offered for that purpose.

The Chairman: For that purpose only?

Mr. Johnson: Yes, sir.

Mr. Edises: It is on the issue of when the Company had knowledge of her alleged Communist affiliation; is that it?

Mr. Johnson: That's right. That's right. That's right.

The Chairman: The objection is overruled.

The Company Exhibit 4.

(Photostatic copy of page from "Labor Herald" issue of Tuesday, August 23, 1949 was received in evidence and marked Company Exhibit No. 4.)

[fol. 158] Mr. Edises: Could I ask Mrs. Walker a question in the nature of voir dire?

The Chairman: Yes.

Mr. Edises: Mrs. Walker, did you testify before the NLRB on more than one occasion in connection with these cannery cases?

The Witness: I don't believe so. I didn't actually testify. I was called before the Board on more than one occasion, but I believe I only testified on one occasion.

Mr. Edises: We will stipulate that the day she testified before the NLRB in connection with the cannery cases was on September 30, 1948.

[fols. 159-160] By Mr. Johnson:

Q. Mrs. Walker, when you testified before the National Labor Relations Board on September 30, 1948, you testified concerning your employment in some of these canneries, didn't you?

Mr. Edises: Just a moment. I object to that. I don't believe that it has any materiality to any of the issues here.

The Chairman: What is the purpose?

Mr. Johnson: I will state my purpose, Mr. Chairman.

The Chairman: Impeachment?

Mr. Johnson: I beg your pardon?

The Chairman: Impeachment?

Mr. Johnson: No, I think that is not the purpose. As far as I know her testimony yesterday was consistent.

That is not my purpose. My purpose in offering it is because the Union has raised here very vigorously the contention that the Company knew about all of these facts many years before and did nothing about it and sat by and condoned it, in effect, and seemed not to be interested in it. And I am laying the foundation through this witness, who is the only one who can do it, for the purpose of showing the source of our information on it and the time as of which the knowledge was gained. It is preliminary to that and for that purpose only.

The Chairman: What is the source? The transcript of those hearings?

[fol. 161] Mr. Johnson: In view of all the technical objections that were made yesterday I was proceeding in the usual, formalized, legal way. But I have prepared excerpts from the transcript.

I do have here for you, Mr. Chairman, subject to examination by Mr. Edises, certain extracts that we have copied from the official record in the office of the National Labor Relations Board in the case pending before that Board entitled "Case No. 20-C-1347, In the Matter of: Bercut- [fol. 162] Richards Packing Company", usually I think called before the Board, "Bearcat", "et al", and Food, Tobacco and Agricultural Workers Union of America, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America", being extracts of the testimony for September 30 1948 and being the testimony of the witness Doris Walker.

[fol. 163] Mr. Johnson: May that extract, then, subject to the objections you reserved to Mr. Edises, be marked as Company Exhibit No. 5.

[fol. 164] The Chairman: No. 5.

(Copy of extracts from transcript of testimony of Doris Walker before NLRB in Case No. 20-C-1347, September 30 1948, was received in evidence and marked Company Exhibit No. 5.)

By Mr. Johnson:

Q. Mrs. Walker, I call your attention to pages 10, 11 and 12 of Company's Exhibit No. 5, which purport to be extracts from testimony given by you before the National Labor Relations Board on September 30 1948 in the Bereut-Richards case just referred to, and ask you if at that time and place you did in fact give the testimony which is listed there on pages 10, 11 and 12.

[fol. 165] The Chairman: Can you answer the question?

The Witness: Yes.

The Chairman: Do you want to look at the original transcript?

The Witness: I just looked at this (indicating Company Exhibit No. 5) and I have been reading it.

Mr. Edises: Does it look like what you said?

The Witness: Yes, it does.

By Mr. Johnson:

Q. Now, Mrs. Walker,—

The Chairman: That answer will stand, subject to correction if you find that the excerpt here isn't a correct copy of the transcript.

By Mr. Johnson:

Q. Just one thing here. Calling your attention to Com-[fol. 166] pany Exhibit No. 1, I think you testified yesterday that the signature "Doris Brin" on that document is your signature.

A. That's correct.

Q. And Doris Brin was your maiden name; is that right?

A. That's right.

Q. And I call your attention that on the application for employment at Cutter Laboratories you also signed your name "Doris Brin Walker".

A. Right.

Q. Is that your signature on this document?

Mr. Edises: What document? What document are you showing her, counsel?

Mr. Johnson: I am showing her a document, merely asking her to identify her signature. —

Mr. Edises: Before you answer I want to see the document.

The Chairman: Let her see it first and then you examine it before she answers the question.

Mr. Johnson: I submit, Mr. Chairman, that the proper way to do this is what I have done: to ask her the question, Is it her signature? so she can identify it and then counsel ordinarily is handed the document after that question.

The Chairman: But —

Mr. Edises: I have a right to object.

The Chairman: Just a moment. You have a right to see it before she answers the question. Go ahead and look at it.

[fol. 167] Mr. Johnson: For your convenience I have prepared typewritten copies.

Mr. Burke: May we have a copy of that, Mr. Johnson?

Mr. Johnson: I have handed what purport to be typewritten copies of this document to the various parties. I want to make it very clear that they were prepared by me and they may be erroneous interpretation of the handwriting. I offer them subject to any explanation.

Mr. Edises: This is supposed to be on this Communist issue; is that right?

Mr. Johnson: Oh, very definitely. I don't think there is any doubt about that if you have read the document. I want to make it clear that I wasn't offering it for any other purpose.

Mr. Edises: We will present the same objection to the question and to the document which I did on the direct question as to whether she was a member of the Communist Party.

Mr. Johnson: I submit, Mr. Chairman, the only question which is pending is the question whether or not the signature on the document is that of the witness.

Mr. Edises: Yes, but are you going to stop there?

Mr. Johnson: I don't know.

Mr. Edises: Well,—

Mr. Johnson: If she says it isn't, I probably will.

Mr. Edises: Well, we are going to object. You have already indicated your purpose. It is a purpose which we deem irrelevant and to which we have objected, and I make the same objection.

[fol. 168] Mr. Johnson: I concede, of course, Mr. Chairman, that you have indicated your ruling on the principal issue. I do contend, and I think in all fairness, and realizing your extreme effort to be fair to both parties, that I am entitled to this preliminary question and to an answer to it, and that from there we take off on the other point.

Mr. Edises: You cannot in my opinion, Mr. Chairman, separate the preliminary from what is to follow.

The Chairman: Well, I am disposed to make the same ruling.

Mr. Edises: You mean that you deem it relevant but that the witness will not be required to answer if she doesn't wish?

The Chairman: Right. Right.

Now, the document might become otherwise admissible.

Mr. Johnson: I am offering it for the purpose of impeachment as well, Mr. Chairman.

The Chairman: I understand. I understand that.

Mr. Edises: May I ask in what way it becomes admissible or is pertinent as impeachment? In what respect has she testified—

The Chairman: I didn't mean to indicate that at all. The main issue here is the state of mind, to my way of thinking, of this employer; and a secondary issue here is what information this employer was acting on when he arrived at the various reasons he assigned for the discharge. This piece of paper may be one of those reasons.

Mr. Johnson: It is. Oh, very definitely.

[fol. 169] Mr. Edises: Well, perhaps not. We don't know at this time how they came into possession of the paper and when.

The Chairman: I understand that. I understand that. But I might consider the document to be admissible if some

from making what must be very abundantly clear the full use of this document.

[fol. 175] The Chairman: That is because you are assuming that when you have laid a foundation otherwise for this document and offered it in evidence we will exclude it on the ground that the signature hasn't been identified. And I don't think that that is going to follow by any means.

Mr. Johnson: No. I think I understand your point. I don't want to beat this to death, but as I understand the ruling that you have indicated, if someone from the Company testifies that this piece of paper, call it, was one of the documents upon which they acted for whatever it is worth and the objection going only to the weight of the document, it would be admitted for that purpose. It might be an advertisement of a 1950-model automobile, but if they say it was the document on which they relied, apparently you are going to admit it for that purpose.

The Chairman: Yes, yes. Exactly.

Mr. Johnson: However, we are then left in this position, which your statement has indicated could be a sheet out of a paper: we could have acted in bad faith; we could have had somebody in the Laboratory write that up; I could have written it up. It is obviously not true. But we feel that we are entitled to ask of this witness the question, "Is that your signature?" so that the question of whether or not we acted on proper information is then, as far as this document is concerned, removed for all time. Nobody else can establish that.

The Chairman: But you had an opportunity to ask the witness that question at the time you acted on it, but you did not.

[fol. 176] Mr. Johnson: That's right.

The Chairman: Well, I don't see—

Mr. Johnson: We don't believe that that forecloses one from offering it at a hearing where the applicant has come in. We didn't know when we discharged her with certainty that she would request arbitration. She is the one who has precipitated this hearing and brought all this thing on. She could dismiss it now.

Mr. Edises: She discharged her, I suppose.

Mr. Johnson: Oh no, we are not contending that.

Mr. Edises: A new issue bang!

Mr. Johnson: She has raised the issue. Possibly we made a mistake in not asking those questions.

Arbitrator Heide: That does violence to the usual rule of presumption of innocence, doesn't it?

The Chairman: I don't know what you mean.

Arbitrator Heide: If the person who has been offended has to prove her innocence, or if they are responsible for a hearing or a court proceeding simply because they —

The Chairman: Well, as I understand what he is saying here, it is this: that if a party to a proceeding doesn't want to answer questions that are relevant in the proceeding, he can dismiss it.

Arbitrator Heide: That's true.

The Chairman: I mean, that is as I understand what you are talking about.

[fol. 177] Mr. Johnson: That's right.

Mr. Edises: May I say, Mr. Chairman, that my original offer, which would assume the Company's good faith information and knowledge on this Communist issue, still holds. Had counsel been willing to accept that instead of attempting, for reasons best known to himself, to drag all this out, these problems would have been avoided and the precise issues would have been before the Board for decision.

The Chairman: Well, that's behind us. That's behind us.

I will overrule your objections to the best-evidence rule on this document and suspend a ruling on it until you have laid further foundation along the lines that I have indicated. That is, if you can lay a foundation as to when this document came into the possession of the Company and the further foundation that it was part of the basis on which the Company acted in arriving at its conclusion, we will entertain another offer of the document.

Mr. Johnson: May I ask that the document be marked for identification at this time. I know you have indicated your attitude with respect to documents being marked for identification, but I think this is important enough that it should be marked for identification in the record right now.

Mr. Edises: We won't object at the proper time when you

offer it, and it is not going to be lost. There are half a dozen copies around.

The Chairman: Well, if we are going to get a lot of these [fol. 178] offers for identification, I guess we might as well start.

Did you have some yesterday? There was one yesterday.

Mr. Johnson: They were all cleared up. There was nothing pending.

The Chairman: They were?

Mr. Johnson: Yes.

Mr. Edises: Why don't we maintain the same ruling that we have had? I don't see any particular reason for offering it for identification.

The Chairman: Well, it has been discussed here and I think we had better mark it.

Company Exhibit No. 6 for identification.

(Photostatic copy of letter over signature reading "Doris Brin" dated 7/10/46 was marked for identification as Company Exhibit No. 6.)

By Mr. Johnson:

Q. Now, Mrs. Walker, did you ever write and sign any communications in which you referred to "strengthening the 'Party'?"

Mr. Edises: That is objected to. The same ground.

The Chairman: The same ruling. The same instruction. The same statement of the witness.

By Mr. Johnson:

Q. Isn't it true, Mrs. Walker, that you wrote and signed documents using the term "strengthening the Party", in which you used that term as referring to the Communist Party?

Mr. Edises: The same objection.

[fol. 179] The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Mrs. Walker, did you ever write and sign any documents in which you referred to the "Cannery Workers Club"?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Is it not a fact that you wrote and signed documents in which you used the term "Cannery Workers Club" and by such reference referred to the Cannery Workers Club of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Did you ever write and sign any documents in which, in referring to the Cannery Workers Club, you also used the expression "my Club"?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Is it not a fact that you wrote and signed documents in which you used the terms "my Club" and "the Cannery Workers Club" and were referring to the Cannery Workers Club of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.
[fol. 180] The Witness: The same answer.

By Mr. Johnson:

Q. Did you ever write and sign documents in which you used the term "the County"?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Is it not a fact that you did write and sign documents in which you used the term "the County", with a Capital C, as referring to the County Committee of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Did you ever write and sign documents in which you user the term "the State"?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Is it not a fact that you did write and sign documents using the term "the State" as referring to the State Committee of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Did you ever write and sign any documents in which, in referring to the daily press, you used the term [fol. 181] "P.W."?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. Isn't it a fact that you did write and sign documents using the term "P.W." as referring to the "People's World", the official newspaper of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling. The same statement.

The Witness: The same answer.

By Mr. Johnson:

Q. You made reference yesterday, Mrs. Walker, to what you referred to as an investigation that the Company made of your activities in 1947. Do you remember that?

A. Yes.

Q. Approximately when was that investigation made, if you remember?

A. Well, to the best of my memory it was made very shortly after the time I was elected to union office. That is, in April. April or May.

Q. And some time after that did you or the Union in your behalf file an unfair labor practice charge against the Company with the National Labor Relations Board?

A. I believe that the Union did.

Q. I show you here a document dated June 24 1947 on the stationery of the National Labor Relations Board and call your attention to the attached copy of the charge.

[fol. 182] A. (Examining prospective Company Exhibit No. 7.)

Mr. Edises: Is there a pending question?

By Mr. Johnson:

Q. Now, have you seen a copy of that before?

A. I don't believe so.

Q. Did you cooperate with Mr. Louis Fowlks, who was then the business agent for the Local, in preparing the facts which were included in the charge filed with the National Labor Relations Board?

Mr. Edises: Now, just a moment. I will object on the ground of irrelevancy, Mr. Chairman.

Mr. Johnson: I can save a lot of time, Mr. Edises:

This is the same type of thing, Mr. Chairman, as on that bulletin yesterday.

Will the Union stipulate that on June 17 1947 Mr. Louis Fowles, who was then the business agent for Local 225, appeared before Irene Kwasnicki, a Notary Public in Alameda County, and swore to a charge against Cutter Laboratories, charging that the Company, on or about May 27 1947, by its officers, agents, and employees, had interfered with and restrained certain of the employees, contrary to law, because of their membership in and activities on behalf of the Bio-Lab Union of the then FAECT, or Federation of Architects, Engineers, Chemists and Technicians.

Mr. Edises: Well, I might be prepared to stipulate to that if I knew what the substance was that you are trying to get at and were satisfied as to its materiality.

[fol. 183] Mr. Johnson: The substance, Mr. Chairman, that I am trying to get at is to show the conditions which existed in 1947, when the Company, according to this lady, had made an investigation and at which time apparently they contend that the Company, if it were going to take action, should have taken action. I want to show the surrounding conditions and the state of mind of the Company at the time that those facts were in their possession.

Mr. Edises: I submit that that is far too general. That doesn't tell us anything about what his purpose is. He could get anything under the sun in under that statement.

Mr. Johnson: I am not going to pursue this subject further than—

The Chairman: It seems material to me.

Mr. Edises: Well, Mr. Chairman, the Company's "state of mind" is an exceedingly broad thing.

The Chairman: I think anything that happened during the period of this employment of this nature is material here. Why not?

Mr. Edises: Well, they haven't connected it up with this witness, for one thing, or even offered to.

The Chairman: They are trying to connect it up with the Union.

Mr. Edises: Well, all right. I am not going to stand on that objection.

By Mr. Johnson:

Q. Put it this way, Mrs. Walker:—

Do you stipulate to the facts, Mr. Edises?
[fol. 184] Mr. Edises: I am not in a position to stipulate because I have no personal knowledge, and neither does Mr. Burke, who is my righthand man here.

Mr. Johnson: I withdraw the offered stipulation. I would stipulate to those facts and be satisfied on this point as far as this witness is concerned.

By Mr. Johnson:

Q. Mrs. Walker, when did you learn that there had been some investigation of your activities by the Company?

A. When one of my neighbors came to me and told me that he had been questioned and that he knew that other neighbors had been questioned.

Q. And, as you have stated, that was shortly after your election as one of the officers of the Local Union?

A. My election as shop chairman.

Q. Yes. Now, the time when you learned that was some time in May of 1947?

A. April or May.

Q. April or May?

A. Yes.

Q. And isn't it true that shortly after you learned what you testified were the facts of an investigation, you went to Mr. Louis Fowls and some of the other representatives of the Unions and complained that the Company was violating your rights?

A. Well, I made a complete report when I found out that I had been investigated to the Union. As I recall, I made a report to the shop meeting and to the Local Union. And we discovered that two other leading officers [fol. 185] of the shop had been investigated at the same time.

Q. And who were they?

A. One was the vice-chairman.

Q. What was the name?

A. Leo Proctor, and the other was the chief shop steward, Jim Smiley.

Q. And you made a report of those facts to Mr. Fowlks, the business agent?

A. To the entire Union, including Mr. Fowlks.

Q. Did you request or suggest that any action be taken by the Union in your behalf?

A. I don't recall making any other specific suggestion other than a protest to the Company.

Q. Was there any discussion by you with any of the Union members or Union officials about the advisability or possibility of filing a charge of unfair labor practice with the National Labor Relations Board?

A. I have been trying to remember as you talked, Mr. Johnson. As I recall, Mr. Fowlks raised the possibility with me and I agreed that it would be a good idea.

Q. And don't you know of your own knowledge that such a charge was filed by Mr. Fowlks?

A. As I recall, it was. I don't recall actually seeing the papers and I know I didn't participate in the action of filing, but I do remember knowing that such an action had been filed.

[fol. 186] Q. And don't you know of your own knowledge the report—

The Chairman: What are you trying to do? Lay a foundation for this charge as being a true charge lodged with the National Labor Relations Board?

Mr. Johnson: I don't think I want to go that far, Mr. Chairman. As I indicated, if Mr. Edises had stipulated to the facts about which I asked, I would have been satisfied so far as the witness is concerned. But he says that he does not know and Mr. Burke does not know.

The Chairman: Let me ask you this question: Is this charge a part of the files of the National Labor Relations Board? Is that where you got it?

Mr. Johnson: The original is. Under their practice, as you know, when a union or an individual files a charge, they send a letter to the employer. I do have the original. I say "original". It is a mimeographed document. But that is the letter that the Company got from Gerald Brown, the Regional Director.

Mr. Edises: If counsel will state that that is the fact—

The Chairman: Do you want to offer it?

Mr. Johnson: Yes, I want to offer it, Mr. Chairman.

Mr. Edises: If counsel will state that that is a true copy of the documents in question, I will raise no objection as to foundation.

The Chairman: All right. It is Company Exhibit No. 7, subject to your right to check, if you want to, to see if it is an authentic document. If it isn't, it is subject to a [fol. 187] motion to strike.

(Copy of Charge filed with NLRB by Local 225, together with letter of transmittal from NLRB to Cutter Laboratories, was received in evidence and marked Company Exhibit No. 7.)

By Mr. Johnson:

Q. Now, Mrs. Walker, calling your attention to the fact that this document, Company's Exhibit No. 7, is signed by Mr. Fowls, it refers to the fact that on or about May 27 1947 the Company and its agents had coerced and interfered with the activities of certain employees by reason of their membership in and activities on behalf of the Bio-Lab Union. Other than this complaint that you had against the Company for investigating you and which you say you reported to Mr. Fowls, had you complained or registered dissatisfaction with any other act on behalf of the Company against you at that time?

A. I don't remember whether it was at that time. I do recall registering a complaint with the Union over a rather—well, violent isn't quite the word—there was no physical violence involved—but a very tense, angry interview which Mr. Beckley had with me at one time. I don't remember exactly whether it was in relation to this period, but it was sometime around the period of union negotiations with the Company—contract negotiations—which perhaps were this time or shortly after this time.

Q. Well, calling your attention to the fact that that document, Company Exhibit No. 7, was filed with the Board on June 18 1947, within a reasonable period after that did you not receive from Mr. Fowls a report upon [fol. 188] what the Field Examiner of the National Labor Relations Board, a Mrs. Susanne Schroeder, had obtained from the Company?

further foundation were laid for it than has been laid to date.

Mr. Edises: Our position, Mr. Chairman, will be the same as before. I would like to make the same objection without having to repeat it in detail that I made when she was asked the question, Is she a member of the Communist Party.

The Chairman: All right. The same objection will be deemed to have been made, the same ruling and the same statement.

The Witness: The same answer.

Mr. Johnson: Now, —

Arbitrator St. Sure: That is as to the specific question of identifying the signature?

The Chairman: Right.

Mr. Johnson: Yes. And on that issue, Mr. Chairman, so that there will be no question about it with respect to the preliminary question of her identifying her signature, may I say that I am offering this document and will attempt to use it in support of the Communist issue which has been raised, that is, the question of this lady's membership in the Communist Party and her Communistic activities. I am offering it also for impeachment purposes. I am also offering it for the purpose of laying a foundation and demonstrating to the panel that this is one of the documents, including the facts, upon which the Company acted in dis- [fol. 170] charging Mrs. Walker. And I feel that only through her can I lay the preliminary foundation as to whether or not that is her signature. Unless I am allowed to ask her that question it will be impossible to proceed further to lay any other foundation, because Mr. Edises will object upon the ground that it has not been identified.

Mr. Edises: I would like —

The Chairman: Well, just a minute. We don't know what objection he is going to make.

Mr. Johnson: I will state my legal position: that unless I am allowed to obtain an answer to that single question there will be no possibility of proceeding to lay any other foundation.

Mr. Edises: I would like to add the further objection, Mr. Chairman, that this is not the best evidence. It is not an original. We would like to see the original.

Mr. Johnson: On that issue, Mr. Chairman, courts and quasi-judicial bodies have certain discretion, and it must be perfectly apparent that documents of this type are those which would not normally or by any effort come into our possession. We are not able to obtain it.

The Chairman: You do not have the original?

Mr. Johnson: We don't have it. There is no possibility of our obtaining it.

Mr. Edises: I don't accept Mr. Johnson's say-so on that point.

Mr. Johnson: I am submitting that to the Board, Mr. Edises.

{fol. 171} Mr. Edises: But I am making a legal objection. If you want to establish a basis for introducing secondary evidence, put someone on the witness stand and let's have the facts pertaining to your inability to get the original.

Mr. Johnson: At this juncture, Mr. Chairman, the only question is the one as to the signature.

Mr. Edises: And I have added to my—

Mr. Johnson: As to anything further, I feel that I am entitled to have that single fact established so that I may take—

The Chairman: Well, I have already ruled on that.

Mr. Johnson: Yes. I merely want the record—

The Chairman: And I have also indicated to you that when you come to put your case in in chief you will have an opportunity to offer this document again as part of your case in chief.

Mr. Johnson: The way I understand it, the document is going to be admitted?

The Chairman: No.

Mr. Edises: I didn't get the answer.

The Chairman: The document hasn't been offered.

Mr. Johnson: I am offering it at this time.

The Chairman: You asked a question.

Mr. Johnson: I want to ask her to identify her signature. Has that been disposed of?

The Chairman: Yes, that has been disposed of.

Mr. Edises: Are you now offering the document?

Mr. Johnson: I offer the document at this time in evidence.

[fol. 172] Mr. Edises: We object on the general grounds previously stated and on the further ground that no proper foundation has been laid by way of identification, and on the further ground that the document shows on its face that it is not the best evidence or an original.

The Chairman: I don't know on this "best-evidence" objection whether a photostat comes within it.

Do you?

Arbitrator St. Sure: I don't know as to that. Necessarily the thing that disturbs me is that we get into a kind of ridiculous situation where mere matters of identification, without going to the substance of the question of Communism, we rule out and then we begin to get stymied from the point of view—

The Chairman: Well, I am just ruling it out now as part of a cross examination. If the witness here refuses to answer a question as to whether this is her signature or not, and they offered this document, lay a foundation as to the date when they got it, when they first saw it,—

Mr. Edises: And also as—

The Chairman: —as proof of when they discovered these facts that they used as a basis for discharge, I would admit this document despite the fact that the signature had not been identified by the person whose name appears on it,—

Mr. Edises: Wouldn't you want—

The Chairman: —in view of the refusal of the witness to answer.

[fol. 173] Mr. Edises: Well, I can see a logical dilemma there, but it would seem to me that the Chairman would want to be satisfied, from whatever source was available, of the authenticity of the document. Documents of this kind—

The Chairman: I understand that,—

Mr. Edises: —are so easily—

The Chairman: —but a person forming the kind of conclusions that the employers formed here may have been basing that conclusion on newspapers, on all kinds of things that wouldn't be technically admissible in a court of law. The conclusion may have been based on idle gossip, it may have been based on all kinds of things,—

Mr. Edises: That is true.

The Chairman: — and the employer, when the time comes for him to put his case in here on the issue of when he discovered all these facts, could offer a telephone directory and a flock of newspapers, and I would admit them. And it seems to me that they would be admissible. Then the record would stand in this posture: that the employer had come to a conclusion, based on this piece of paper, this piece of paper and another piece of paper.

Mr. Edises: Well, I think that —

The Chairman: Let's assume that this document that is before us now was part of the basis of the conclusion that the Company arrived at here. In arriving at that conclusion they did not have the benefit of Doris Brin's statement to [fol. 174] them that this was her signature, and yet they acted on it. So these objections about proper foundation for a piece of paper and ordinary legal objections don't seem to me to have much weight. This is the way I feel about it.

Mr. Johnson: May I point out in support of what you have just said that these ground rules that we were talking about a few minutes ago, the rules of the American Arbitration Association, Voluntary Labor Arbitration Rules, seem to cover that exact point in Rule 28. It provides:

"The Arbitrator shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary."

I cite that in opposition to Mr. Edises' point, if he has one, on the best-evidence rule.

There is one point I should like to state, Mr. Chairman. And let me say it is not my habit to continue to harangue against rulings which have been made. I do feel, however, that you have been trying to draw a line here which would prevent either party from being, say, abused by anything that happens in these proceedings, and that in an effort to do that you have set up certain limitations and restrictions that eliminate certain normal implements of the law. I suggest to you, in all spirit of temperate consideration of this matter, that the ruling which you have indicated really puts us in the position where we are completely foreclosed

Q. And of course you were also receiving the "Labor Herald"?

A. I also believe so. I don't recall specifically, but I think so.

Q. Now, did you ever bring copies of the "People's World" down to the Cutter Laboratories plant during April and May of 1947 and leave them around the ladies' restroom or other public facilities of the Laboratories?

A. I don't remember doing so.

Q. You don't remember doing so?

A. No.

Q. On any occasion?

A. No.

Q. Did you ever bring any mimeographed bulletins referring to meetings under the sponsorship of the Communist Party into the Cutter Laboratories property and leave them in the ladies' restroom or other public facilities [fol. 195] where other employees came during April or May of 1947?

A. No, I don't recall doing any such thing.

Q. During that period you did frequently or occasionally distribute and pass out those mimeographed pamphlets to various people, didn't you?

A. I don't remember doing it.

By Mr. Johnson:

Q. You don't remember doing it?

A. No.

Q. You have been, just within the last month, circulating these so-called peace petitions, haven't you?

Mr. Edises: Just a moment. I object to that. It is incompetent, irrelevant and immaterial.

The Chairman: Sustained.

Mr. Johnson: That is all at this time, Mr. Chairman, as far as cross examination of this witness.

And for the purpose of the record I would move at this [fol. 196] time that the witness be instructed to answer each one of the questions which has been propounded to her.

with respect to Communist Party membership or activity, referring specifically and exclusively to a series of questions which was asked yesterday afternoon following a discussion among the panel, and also to each and all of the questions asked this morning concerning the document which has been marked as Exhibit No. 6 for identification, and particularly referring aside from that request to the request that the witness be instructed to answer the question as to whether or not the signature on the Exhibit No. 6 for identification is her signature.

In support of this request I merely make this brief statement: that our purpose for renewing it is, in the first place, because we believe it is essential to protect any points that we may want to argue further; secondly, that while there may have been a disposition as of yesterday to take certain action or protective action or to restrict testimony in view of the fact that the questions at that time were merely questions unsupported by any presentation or offer of written documents, now at this stage, the Company having offered in good faith a document which we submit on its face appears to be the signature of this Petitioner, and we having attempted to examine and inquire into that, and not being in the position now of merely asking questions without something to support it, we feel that the panel would possibly desire to reconsider its position or at least to reserve a ruling on those points. And [fol. 197] for those reasons I make the motion at this time.

The Chairman: All right. Now, as far as the questions that were asked with respect to Company Exhibit No. 6 for identification, the ruling that we made can stand. The document was excluded on our own objection that a proper foundation had not been laid for the introduction of the document, part of which foundation was not the signature of the witness.

As far as the balance of the motion is concerned, we will reserve a ruling on it until we come to the conclusion of the evidence.

Mr. Edises: I would like to renew the objections that I made when the questions were asked individually.

The Chairman: Have you any redirect?

Mr. Edises: Yes. But before I go into it I would like

sponsive to the only question that has been asked of her. And I ask that the latter part of the statement after the word "Yes" be stricken.

The Chairman: All right. Let it be stricken.

Now do you want to look at it?

Mr. Johnson: Yes.

The Chairman: Do you have copies of that document?

Mr. Edises: I have only one carbon copy.

The Chairman: Well, you might let me be glancing at it.

Mr. Johnson: Do you (addressing Arbitrator St. Sure) want to see this?

(The report referred to was passed to Arbitrator St. Sure.)

Mr. Edises: Mrs. Walker—

The Chairman: Just a moment. Let him (indicating Arbitrator Heide) finish here.

Arbitrator Heide: All right.

By Mr. Edises:

Q. Have you examined the document that I just handed you?

A. I looked through it. I haven't read it through. I [fol. 210] just looked through it.

Q. Well, I wanted you to read it through.

A. I haven't done that yet.

Mr. Edises: Because I want to ask you whether it is an accurate version of what occurred.

As a matter of fact, Mr. Chairman, I think I will offer it on the theory that it is an official report in the course of union business of a matter that occurred in the course of union business and probably would be admissible on that theory, unless you would prefer to have her use it for the purpose of refreshing her recollection.

The Chairman: I have no preferences about it.

When did you make this memo?

Will you hand it to the witness?

Mr. Johnson: May I speak on the subject. Maybe I can shorten it.

The Chairman: All right.

Mr. Johnson: I think the document, if offered directly,

is obviously inadmissible even under the guise of union reports, but I have learned by experience that making a fuss over certain documents creates inferences which can never be removed; and I am fully aware that for the purposes of refreshing a witness's recollection, for which she has already laid the foundation, it is probably going to get in anyway. So if he is going to offer it for that purpose and for that limited purpose, I will shorten this by giving him the green light—providing that you so rule.

[fol. 211] Mr. Edises: I don't want to take advantage of your generosity.

The Chairman: Just a minute. Let me ask the witness a few questions.

Mr. Johnson:—It isn't generosity. It is practicality.

The Chairman: What date does that report bear?

The Witness: June 17, 1947.

The Chairman: When did you talk to Mr. Beckley?

The Witness: That same day.

The Chairman: Do you type?

The Witness: Yes.

The Chairman: Did you type that yourself?

The Witness: As I recall what I did, I typed up a report as soon as I was able to.

The Chairman: You typed that yourself?

The Witness: No. What I am saying is that I typed up a report, but I think that this was retyped from my report and that I then read it through and wrote on the bottom of it.

Mr. Johnson: It is so indicated, Mr. Chairman.

The Chairman: I know.

The Witness: Yes, it is. As a matter of fact the initials of the Union office secretary—on the last page.

The Chairman: Well, if we were in a court of law she could repeat the substance of that thing, refreshing her recollection from it.

I will admit the document.

[fol. 212] Do you offer it?

Mr. Edises: I offer it.

The Chairman: All right. Union Exhibit 6.

(Report dated June 17 1947 over signature of Doris B. Walker was received in evidence and marked Union Exhibit No. 6.)

Mr. Edises: I have no further questions.

The Chairman: Do you want to ask the witness any questions?

Arbitrator Heide: No.

The Chairman: Do you want to ask the witness any questions?

Arbitrator St. Sure: No.

The Chairman: I have one or two questions I would like to ask.

When were you married? What year?

The Witness: 1946.

The Chairman: 1946?

The Witness: Yes.

The Chairman: Do you remember the month?

The Witness: September 17.

The Chairman: In what name were you enrolled at the University of California at Los Angeles?

The Witness: Doris Brin.

The Chairman: Doris Brin?

The Witness: Yes.

The Chairman: The same is true of Boalt Hall?

The Witness: No. I was married once before. My name [fol. 213] the first semester at Boalt Hall was Doris Brin. I was married during the Christmas recess, and my name was then Doris Brin Marasse.

The Chairman: So that the records at Boalt Hall would reflect both names.

The Witness: They should.

The Chairman: Now, I wish you would take this Application for Employment at Cutter Laboratories, which is Union Exhibit 1. Do you remember the day when you made this application out?

The Witness: Yes.

The Chairman: And where were you?

The Witness: I was at Cutter Laboratories.

The Chairman: At Cutter Laboratories?

The Witness: Yes.

The Chairman: And do you know whose office you were in at the time?

The Witness: I was in the hallway outside— The personnel offices are in several rooms opening off a long hallway in one of the buildings of the Laboratories, and I was in this hallway. There is a table there where people who apply for work fill out their applications.

The Chairman: Sit down and fill these applications out?

The Witness: That's correct.

The Chairman: Do you know whom you met?

The Witness: Whom I met?

The Chairman: Yes. Who talked to you on behalf of the Company?

[fol 214] The Witness: Oh.

The Chairman: Who handed you the application?

The Witness: Mrs. Beth Culp.

The Chairman: Mrs. Beth Culp?

The Witness: Yes.

The Chairman: Now tell me as best you can recall what happened. Did you go in her office?

The Witness: Yes.

The Chairman: You did?

The Witness: Yes. First I went out in the hall outside her office. I was not the only person applying for work that day. And when she called me into her office I sat down in front of her desk. And I don't recall anything specific about the initial conversation except that she gave me an application blank to fill out, and then I went outside and filled it out.

The Chairman: Let's pause there for a moment. Is this application for employment entirely in your own hand?

The Witness: Well, except for the red pencil marks on it.

The Chairman: Those are these entries at the foot in red pencil written on the diagonal?

The Witness: Yes. And also—

The Chairman: And also the words "516 Sutter St."?

The Witness: ST. and also the "(c)" in parenthesis, and the "JW" is not in my handwriting.

The Chairman: The "JW". Where is that?

The Witness: That is also on the diagonal. It is in ink [fol 215] on the original.

Mr. Edises: Well, just a moment. I will object to that question upon the ground that it calls for certain information officially given by the Board or by some third person. I think there are better sources of that evidence than this witness's knowledge.

The Chairman: Read the question, please.

(Pending question read.)

Mr. Edises: That is hearsay ~~three~~ times removed.

The Chairman: Overruled.

A. I don't recall hearing anything more about this until we decided to dismiss it after the strike.

By Mr. Johnson:

Q. Don't you recall, Mrs. Walker, that prior to the time that any strike was ever started in 1947 Mr. Fowlks reported to you that Mrs. Schroeder, the Field Examiner for the Board, reported to the Union that she had investigated the charge with the Company's officials and that they took the position that there was no action taken by them because of union activities, that the investigation was for the purpose of checking into subversive activities on the part of Mrs. Doris Walker?

A. I remember no such report.

Q. You don't recall that at all?

A. No.

Q. You say that that charge was eventually dismissed? [fol. 189] A. It was dismissed as a part of the strike settlement, as I recall.

Q. Well, you never discussed with the Company the matter of their agreeing to dismiss that, did you?

A. All I remember about it, Mr. Johnson, is that it was dismissed after the strike and, as I recall, it was dismissed in conjunction with the settlement of the strike. And that's all I remember about it after it was filed.

Q. Didn't Mr. Fowlks ever tell you that he had been informed by Mrs. Schroeder that the company said that they would welcome such an investigation if she wanted to make one?

A. No.

Q. You never heard anything about that?

A. I don't recall any such thing.

The Chairman: May we take a brief recess?

Mr. Johnson: Oh, certainly.

The Chairman: By the way, when was the strike?

The Witness: August 1947.

(Short Recess)

By Mr. Johnson:

Q. Mrs. Walker, calling your attention to the fact that, as has been indicated, the original charge which is Company Exhibit No. 7 was filed on June 18, 1947, I will ask you if it is not a fact that on the same day the Union through Mr. Fowlks, who was the man who had signed that charge, wrote out and forwarded to Cutter Laboratories the first demand that the contract be opened. And I show you a [fol. 190] copy of a document dated June 18, 1947 addressed to Cutter Laboratories, "Attention: Mr. A. K. Beckley," signed "Bio-Lab Union of FAECT, Local 225, UOPWA, by Louis Fowlks, Business Agent."

Mr. Edises: Just a moment. Are you asking her to identify a copy of a document?

Mr. Johnson: She can tell us from her own memory or use the document in any way that she wishes, Mr. Edises. I thought maybe that would help her.

Mr. Edises: Well, all right, if you want to go to her own knowledge.

The Chairman: That's what the question calls for.

A. I don't remember ever seeing it before, Mr. Johnson.

By Mr. Johnson:

Q. The question is, Do you remember whether or not on the same day that that charge was filed with the National Labor Relations Board, the Union first made a demand on the Company that the contract be opened?

A. I don't remember, myself, what day either event occurred upon.

Q. I show you this document that we have referred to here as being the letter of June 18 '47 addressed to Mr.

Beckley by Mr. Fowlks and ask you if you have ever seen the original of that.

[fol. 191] (Copy of letter dated June 18, 1947 to Cutter [fol. 192] Laboratories from Local 225 was received in evidence and marked Company Exhibit No. 8.)

By Mr. Johnson:

Q. Concerning this investigation that you said was made of you sometime in May of 1947, isn't it true that on July 8, 1947 the paper known as the "Labor Herald" printed an article by a Mr. Ronald R. Cooley referring to that investigation and specifically mentioning you?

A. I don't remember.

Q. I show you a copy of the "Labor Herald" for July 8, 1947. I call your attention to the article appearing immediately under the masthead; I guess you would call it, of the paper entitled "Thought Police' Spying Is Prelude to Negotiations," and which prints a not-very-good picture of Mr. Beckley.

Mr. Edises: May I see it, please.

Mr. Johnson: The picture?

(Prospective Company Exhibit No. 9 was passed to Mr. Edises.)

Mr. Edises: Your purpose, I take it, is to get into a record a copy of this "Labor Herald" article?

Mr. Johnson: That's all.

Mr. Edises: Well, offer it. I won't object.

By Mr. Johnson:

Q. Did you ever see this document?

A. Yes.

Q. About the time it was issued?

A. I imagine so. I don't remember specifically.

Mr. Johnson: I offer the document, Mr. Chairman, as Company Exhibit No. 9.

[fol. 193] The Chairman: No. 9.

(Photostatic copy of excerpt from "Labor Herald" of July 8, 1947 entitled "'Thought Police' Spying Is Prelude to Negotiations" was received in evidence and marked Company Exhibit No. 9.)

Mr. Johnson: May I have that original, Mr. Edises?
Mr. Edises: Yes.

By Mr. Johnson:

Q. You stated yesterday that you had been informed by some neighbor that these investigators were asking about your political affiliation.

A. Among other things.

Q. I call your attention to the next-to-the-last paragraph on the second page of this article which states as follows: "Doris Walker's neighbors had suddenly been thrown into a bitter feud when one of Cutter Lab's quiz experts, after ringing doorbells up and down the block, found a violently anti-labor neighbor who took great delight in telling what labor papers had been seen in Mrs. Walker's mailbox, denounced her for the company she keeps and said she is a CIO organizer and certainly a Communist." Did you read that part of the article previously?

A. Yes.

Q. Isn't it a fact that what these neighbors told you was that the investigator made certain inquiry as to whether or not they knew you were a member of the Communist Party?

A. Among other things.

Q. That was reported to you, was it?
[fol. 194] A. Yes.

Q. And this reference to what labor papers were in your mailbox. Isn't it true that these neighbors also told you that one of the neighbors had reported that you were regularly receiving through the mails the "People's World," the Communist paper?

A. There was no mention of any specific newspaper that I recall.

Q. You were receiving the "People's World" at that time, weren't you, regularly.

A. I believe so.

The Chairman: When you say "the order", what kind of an order are you talking about?

The Witness: The print shop order for the printing of the proofs for the labels, cartons or direction sheets, whatever it was.

The Chairman: All right.

The Witness: As I say, I would do the necessary paper work to put the order into motion, and I would file duplicate copies of the copy in special files that I had where [fol. 221] I kept records of all labels, cartons and direction sheets, that is, the contents of them. And I would take the original over to the print shop and tell the printers when we wanted the proofs and talked to them about the copy, if there was anything special I wanted to point out to them according to the instructions that had been given me, that is, as to the face of the type and the size and so on. Those instructions were given to me when the copy was given to me, and I passed it on to the print shop.

The Chairman: Then do I understand that you were kind of an intermediary—

The Witness: That's correct.

The Chairman: —between the people who wrote the copy and the printers?

The Witness: That's exactly right, for that particular portion of the job.

The Chairman: Well, was it your responsibility to see that the printers printed the copy correctly?

The Witness: Yes. It was my responsibility to read the proof after it had been set in type, check it against the copy that I had.

The Chairman: Was your action in that regard final or did anybody check your work?

The Witness: It was generally final. It would be checked when the— Let me take that back. When I had the proofs I attached an approval sheet to them and took them up to the person who had given me the copy in the first place; [fol. 222] and the proofs were then taken around to a series of people, heads of departments who were concerned with the particular product or with the label: advertising; the department making the product; and so on. And they checked over the proof. Now, I can't tell you whether

they read every word or not, but a series of five or six people had to put their O.K. on the approval sheet before I got it back and before the print shop was told to go ahead and print.

The Chairman: Now, when you talk about labels, what kind of labels were they? Labels to go on cartons or bottles, or both?

The Witness: Both.

The Chairman: Both?

The Witness: Both. And sometimes the label was printed directly on the carton; that is, instead of pasting a label on the carton, it was printed on the carton.

The Chairman: When you talk about directions, what is that? Is that the kind of a direction that you see on a medicine bottle as to how much to take?

The Witness: Yes, except that this was a little booklet that went into the carton.

The Chairman: Into the carton?

The Witness: That's right.

The Chairman: Just generally speaking, what did those booklets contain? Directions as to dosages and things of that kind?

The Witness: Yes. It contained an explanation of what the thing was and how it should be used.

The Chairman: How it should be used. Now, was there [fol. 223] anything else besides the labels and directions?

The Witness: The cartons. And I kept the files which showed the past history of the labeling and direction sheets for a product and what the current label, direction sheet and carton was—what was in process. In other words, I was responsible for all those files, keeping them up to date.

The Chairman: How long did you work at that job?

The Witness: About two years.

The Chairman: About two years?

The Witness: Yes.

The Chairman: And then you were transferred to the purchasing department?

The Witness: That's correct.

The Chairman: And did you hold the same job in the purchasing department from the time you were transferred there until you were discharged?

some clarification of what counsel meant when he said that he was through with cross examination "at this time".

Do you mean that you are going to cross examine her again later?

Mr. Johnson: What I meant to say was that I am now finished with cross examination.

Mr. Edises: Oh.

Mr. Johnson: I will say this: I might have to recall her, or I think I had better ask the right to reserve cross examination on Exhibit 6 for identification in the event that the foundation is eventually submitted.

The Chairman: All right.

[fol. 198] Mr. Johnson: With that single reservation, my statement is that I am finished cross examination now.

Redirect examination.

By Mr. Edises:

Q. Mrs. Walker, reference was made to the fact that you did not stand for re-election after the expiration of your term as President of Local 225. Will you tell us what led you to decide not to stand for re-election?

Arbitrator St. Sure: Before that question is answered, could I ask for a meeting of the Arbitrators?

The Chairman: Yes.

(Short recess to permit of executive session.)

The Chairman: Will you read the last question, please.

(Pending question read).

The Chairman: The Board has conferred in executive session and on its own motion will sustain an objection to the question on the ground that it relates to a collateral issue, and upon the further ground that in view of the refusal of the witness to answer certain questions here, this question on redirect will only lead to further recross examination.

Mr. Edises: Very well. Then I move to strike the direct testimony on the subject, Mr. Chairman.

The Chairman: The motion is denied.

Mr. Edises: Well, I don't want to argue, but—

The Chairman: You are at liberty to argue.

Mr. Edises: — If cross examination is not to be permitted on the subject —

[fol. 199] The Chairman: I don't see, the way the record stands now, that it harms either party.

Mr. Edises: Well, there is an inference there which is untrue and unwarranted. I mean in the direct.

The Chairman: You can draw an inference either way, the way the testimony sits now.

Mr. Johnson: Just before we pass that point, Mr. Chairman, and without desiring to get long speeches into the record, may I just say that the Board has disposed of the question on its own motion. I was going to make this suggestion: that I would have no objection to the lady answering that if we were allowed to inquire fully into the implications of the question. I state to you frankly that one reason that I covered her resignation and the contemporaneous filing of the affidavits with the National Labor Relations Board yesterday was for the purpose of creating what I consider to be the reasonable inference in the minds of the Board that she resigned one day and the non-Communist affidavits were filed the next day.

Now, if Mr. Edises wants to inquire into the state of her mind in resigning, we feel that that would necessarily involve this question of whether or not she was a Communist and that was the reason for which she resigned. I would be glad to have him go extensively into his question if we are allowed to explore without limitation the same subject. But I do realize that you have made your ruling on your own motion, following out what appears to be a considered [fol. 200] effort to protect the rights of both parties. And I don't want to argue the point further.

Mr. Edises: I would like to correct the record. She didn't "resign". The record shows that her term expired.

The Chairman: Well, the record will speak for itself.

Let the record also show that the ruling is the unanimous ruling of the Board.

By Mr. Edises:

Q. Mrs. Walker, with respect to that shop paper that was shown you, there is just one little point that I would like to clear up.

Mr. Johnson: You mean the bulletin of the Union dated January 13, 1950?

Mr. Edises: Yes. She stated that she was unable to identify it, and I just want—

The Chairman: Is it an exhibit?

Mr. Johnson: No, it is not.

Mr. Edises: No, it is not.

Arbitrator St. Sure: They stipulated with respect to the statements in it.

Mr. Edises: I think the record will show what I am referring to.

By Mr. Edises:

Q. You stated that you hadn't seen it. Will you explain how it happened that it didn't come to your attention? It is dated January 13, 1950.

A. Well, all union bulletins are distributed by hand at the Cutter gates, as they are at certain other union shops, and they are mailed from the union office only to people who [fols. 201-204] don't work in shops where they are distributed by hand. And my union card is still in the Cutter Laboratories file in the union office, and consequently I don't get any of the stuff through the mail. The reason it was at that time and still is in the Cutter Laboratories file is because the office secretary is superstitious of moving it out until this case is decided.

[fol. 205] By Mr. Edises:

Q. ~~Mrs. Walker~~ there has been testimony allowed into the record consisting of extracts from a transcript of the National Labor Relations Board hearing held September 30 and October 1, 1948. I would like to ask you whether that was an open, public hearing to which representatives of the public and press had access.

[fols. 206-207] A. Yes.

Mr. Johnson: That is objected to upon the ground it is incompetent, irrelevant and immaterial.

The Chairman: Overruled.

A. (Continuing) Yes. In fact, the press was there.

[fol. 208] DORIS WALKER, the witness on the stand at the time of recess, resumed the stand and further testified as follows:

Redirect examination (Continued).

By Mr. Edises:

Q. In the course of your testimony this morning you, in answer to a question by Mr. Johnson, referred to a conversation with Mr. Beckley held sometime in June 1947. Do you recall making that answer?

A. Yes, although I don't recall exactly when that conversation took place. June sounds about right.

Q. Did you make any report to the Union in the course of official union business concerning that conversation?

A. Yes, I did.

Q. I show you a three-page typewritten document dated June 17, 1947 and ask you if that is the original report that you filed with the Union regarding your conversation with Mr. Beckley at that time.

A. May I have a moment to look at it?

Q. Yes.

A. (Reading report.) Yes, I remember making this summary.

Mr. Johnson: I submit, Mr. Chairman—

[fol. 209] The Chairman: You haven't been hit yet. Do you want to take a look at it?

Mr. Johnson: No, I haven't objected because this is the way I understand that documents should be handled and the way he should have handled mine this morning. He has only asked her if she is familiar with it, and therefore I made no objection. But she has volunteered the statement that it is a summary of something, which is not re-

The Chairman: I see. Yes.

The Witness: Of course the "Phi Beta Kappa—B.A.", and so on, at the bottom is not mine.

The Chairman: "with Honors in English"?

The Witness: Yes. That is not in my handwriting.

The Chairman: How about the words on the back?

The Witness: On the back it is.

The Chairman: That is in your hand?

The Witness: Yes.

The Chairman: Everything else on that page is in your own hand?

The Witness: The "6 or 8 months" is not in my handwriting.

The Chairman: The "6 or 8 months" under the heading of "Previous Employment" under the figures "1939"?

The Witness: That's right. That is not in my handwriting. And there are some little numerals I see around the date of birth. I don't know what they are, but they are not mine.

The Chairman: That is, over the figures "1939"?

The Witness: Yes. And below there is something.

The Chairman: And below?

The Witness: "79" it looks like. That is not in my handwriting. I believe the rest of it is.

The Chairman: Everything else on the page?

The Witness: Yes.

The Chairman: All right. Now, were any of these other [fol. 216] endorsements that are not in your handwriting put on this application for employment on that day in your presence?

The Witness: I think the "6 or 8 months" was put on in my presence.

The Chairman: By whom?

The Witness: By Mrs. Culp.

The Chairman: Anything else?

The Witness: No, nothing that I recall.

The Chairman: So that as I understand your testimony, then, with the exceptions that you have indicated, this application for employment was entirely in your own hand; and before you left it at Cutter Laboratories that day

the only other thing that was written on it were the words "6 or 8 months" under the figures "1939"?

The Witness: That's correct.

The Chairman: Now, when you had finished making out the application for employment did you go into Mrs. Culp's office?

The Witness: Yes.

The Chairman: Did you talk to her?

The Witness: Yes.

The Chairman: Is she still employed by the Company, by the way?

Mr. Wagner: Yes.

Mr. Johnson: I think there is one point, Mr. Chairman, that maybe you would like to clear up right now, because I am sure it is an inadvertence. I think in previous testimony [fol. 217] the witness said that "516 Sutter St."—

The Chairman: She just said now that that was not in her handwriting.

Mr. Johnson: No. But it was written that day, wasn't it?

The Witness: No; it wasn't, I am quite sure.

The Chairman: Then you went into Mrs. Culp's office afterwards with the application in your hand?

The Witness: Yes.

The Chairman: And what happened then?

The Witness: She interviewed me on the basis of the application.

The Chairman: Did she read the application?

The Witness: Yes, she did.

The Chairman: Did she ask you any questions?

The Witness: Yes.

The Chairman: What?

The Witness: Well, she asked me why I was looking for work after, as my application indicated, I had not worked for a long period of time. I told her that I needed a job now and that that is why I was going back to work. And she asked me if I had left off any other honors or anything that would indicate my abilities, and I recalled then that I had left off Phi Beta Kappa. And she gave me the paper and I scribbled it on the back. And she asked me for references. I don't recall whether she asked me for

them before I had filled out the application or while I was in her office, but I remember her asking me for them. And [fol. 218] she asked me how long I had worked for this John Tripp. I told her six or eight months, and she made a note of it on the application. I don't— Well, then she wanted to know what kind of work I was looking for, and I told her that I would take anything—either office work or production work. She told me that they didn't put people with college educations in production work and that would be out. So I said that office work was all right. And I don't recall whether it was on that day or a day when I was called back that I took an aptitude test. I think it was on that day that she gave it to me—a clerical or typing aptitude test. Perhaps it was a combination of both. I believe I took it that same day. It included typing for speed and copy work and, I don't know, a bunch of different kinds of tests. I don't recall them too specifically. And when I had finished those tests—I am pretty sure now they were that day—she told me that they would be very happy to have me work for them and that there was nothing open that particular day, but that she felt sure that something would come up and that she would get in touch with me.

The Chairman: When was this photograph taken?

The Witness: The day I went to work—actually went to work.

The Chairman: At the Cutter Laboratories?

The Witness: That's right.

The Chairman: Now, were the names of this dentist—Is it "Berke" or "Ber-ke"?

The Witness: Berke.

The Chairman: Dr. William R. Berke and Francis Mc-[fol. 219] Ternan. Were those names written on there when you filled out the application out in the hall, or were they written on after you talked to Mrs. Culp the second time?

The Witness: That's what I don't remember.

The Chairman: You don't remember?

The Witness: No.

The Chairman: Now, I think you testified that you per-

Q. Then did either of those gentlemen, either Mr. Beckley or Mr. Cutter, make any remarks about the Union?

A. Yes. As I recollect, Mr. Cutter opened the meeting in regards to the deadlocked negotiations, and at one time I believe he said that "Nothing but a left-wing union would press for wage increases at this time".

Q. That "Nothing but a left-wing union would press for wage increases at this time"?

A. Yes. Something to that effect.

Q. Anything else along that line?

A. No, not that I recollect.

Q. Did Mr. Beckley say anything?

A. Well, I believe that at the conclusion of the meeting Mr. Beckley advised us to "get out of that left-wing union".

Mr. Edises: No further questions.

[fol. 238] Cross-Examination.

By Mr. Johnson:

Q. How long have you been employed at Cutter Laboratories?

A. Approximately six years and a half.

Q. In other words, since—

A. January the 3rd 1944, I believe.

Q. And could you tell us what your job is with the Company, aside from your capacity with the Union?

A. With the Company, at the present time I am stores clerk.

Q. Stores clerk. Have you held various positions during your service there?

A. Well, for the first three or four years I had charge of the sub-store, where we had all the labels and direction sheets and cartons and so on.

Q. And then you were promoted to a higher position?

A. Well, I was transferred over there, yes.

Q. Transferred. I assume the new position is higher in the scale and pays a higher rate?

A. No, it is about the same.

Q. About the same. Now, your service there has been continuous since you first came in?

A. Except for sick leave.

formed two types of jobs while you were employed at Cutter Laboratories. What was the first one?

The Witness: Label clerk.

The Chairman: Label clerk?

The Witness: That's right.

The Chairman: And then the second was typing in the sales department?

The Witness: Purchasing department.

The Chairman: Purchasing Department?

The Witness: Right.

The Chairman: I wonder if you could tell me in a little more detail just exactly what you did and what your duties were as label clerk.

The Witness: Well, the labels—the copy for the labels, the cartons and the direction sheets were prepared in another department. I believe it was the New Products Department.

The Chairman: Did you have a desk?

The Witness: Yes, I had a desk with a typewriter. My desk was directly opposite my supervisor's desk when I [fol. 220] first started to work.

The Chairman: How many other desks were there in the room?

The Witness: Oh, perhaps 20. 15 or 20.

The Chairman: Were they close together?

The Witness: Yes.

The Chairman: All right. Once again, What was it exactly that you did?

The Witness: Well, as I say, the copy for these things, the labels, the cartons and the direction sheets were prepared in another department. They were brought to me to be ordered from the print shop. When I first went to work the print shop was run as a part of the Laboratories. The printers were—

The Chairman: There was a print shop right on the premises?

The Witness: Right on the premises. The printers were employees of the Laboratories. And I would do the necessary paper work to make a record of the order. I forget now exactly what it consisted of. And I would take the copy—

Q. Except for sick leave. And you said that you were elected, I think, President of the Union sometime in December of 1949?

A. Yes. I think it was in April of this year.

The Chairman: Did you say "President"?

[fol. 239] The Witness: Yes.

Mr. Burke: Shop chairman.

Mr. Johnson: I didn't mean to misrepresent it. I don't know. These gentlemen seem to differ with us.

Mr. Edises: What is your Union title?

The Witness: Well, Chairman, I guess is the regular word we go by. Chairman of the Cutter Chapter. It might be termed President. I don't know.

Mr. Johnson: Mr. Edises, there seems to be some difference. I don't want to haggle. Do you want to stipulate that as far as the Local is concerned, that gentleman's title is Secretary-Treasurer?

Mr. Edises: Oh, I understand he holds two offices.

Mr. Johnson: Apparently.

Mr. Edises: That's right.

By Mr. Johnson:

Q. So, so far as the Local is concerned, you are Secretary-Treasurer and have been since December 15; right?

A. Approximately.

Q. And as far as the unit or division at the Cutter Laboratories is concerned, as you have testified, you are the shop chairman?

A. About April.

Q. I beg your pardon?

A. April of this year.

Q. Since April of this year?

A. Yes.

[fol. 240] Q. Now, at this meeting to which you say you were called there was a large group of employees there?

A. Yes, there were.

Q. And you said Mr. Cutter opened the meeting. Do you recall what he said?

A. Well, he started in explaining the deadlocked negotiations.

Q. Then who read this statement that you have referred to as having been read concerning Mrs. Walker?

A. Mr. Beckley read that later on.

Q. Before he read that, didn't he say to the people present that Mrs. Walker had been discharged?

A. Yes. I believe that he said that that was the reason for the meeting. That was one of the reasons for the meeting.

Q. And didn't he say that, So that there wouldn't be any misunderstanding as to the reasons for her discharge, they were going to read to you folks exactly what they had read to her?

A. That could have been so.

Q. I beg your pardon?

A. I believe so. Because I was quite a way back and I didn't get everything that was said.

Q. At any rate he read some written statement?

A. Yes.

Q. Then did he proceed to make any speech on the subject, or was that the end of his statement?

A. He might have said something but I don't recollect what.

Q. Nothing that you remember. Isn't it a fact that what [fol. 241] he did was to simply announce that he was going to read to you people the exact statement that had been read to her and that he then terminated his remarks?

A. Yes, I believe so.

Q. And any discussion that you had with him about getting out of this Union was a private discussion later, wasn't it?

A. No, there was no discussion. That was his advice to the group.

Q. When?

A. When the meeting—Just before the meeting was over.

Q. Just before the meeting was over?

A. Yes.

Q. Do you remember anything else that was said?

A. No. He asked if there was any questions, and there was no questions asked at that time.

Q. Well, either Mr. Beckley or Mr. Cutter did ask, didn't

they at that meeting if anybody wanted to say anything?

A. Yes. I believe it was Mr. Beckley. It could have been Mr. Cutter. I don't recollect which one.

Q. In other words, before they adjourned the meeting and sent the people out, they did ask if anyone present wanted to say anything?

A. That's right.

Q. Anything further that you recall about the meeting?

A. No.

Mr. Johnson: That's all.

[fol. 242] The Chairman: Any redirect?

Mr. Edises: No.

The Chairman: Do you want to ask any questions?

Arbitrator Heide: No.

The Chairman: Do you?

Arbitrator St. Sure: No.

Mr. Edises: Call Mr. Burke.

The Chairman: No. Just a moment. I want to ask one question.

Mr. Edises: Oh, I beg your pardon.

The Chairman: When the meeting was asked if anybody wanted to say anything, did anybody say anything?

The Witness: I didn't get that.

The Chairman: I understood you to say that either Mr. Beckley or Mr. Cutter asked the meeting if anybody had any questions to ask. Is that correct?

The Witness: Yes.

The Chairman: Did anybody have any questions to ask or anything to say?

The Witness: No.

The Chairman: That's all. Thank you.

(Witness excused.)

Mr. Edises: Call Mr. Burke.

The Chairman: What was the outcome of the strike?

Mr. Johnson: There wasn't any strike.

Mr. Wagner: There was no strike.

[fol. 243] The Chairman: Not the strike, but I mean the deadlocked negotiations.

Mr. Burke: We finally got a raise. Seven and a half cents.

The Chairman: And when was that?

Mr. Wagner: The contract——

The Chairman: Do you remember the date?

Mr. Burke: The contract was executed December 1 1949.

The Chairman: Did the negotiations continue up to then, or when was the settlement effected?

Mr. Johnson: When was what, sir.?

The Chairman: When was the settlement effected after the negotiations?

Mr. Burke: I will testify to that.

Mr. Edises: I am going to put on Mr. Burke for that purpose.

Mr. Johnson: I would like to clear up that there were other things developed by the negotiations—other contract changes. I presume that that will be developed by Mr. Burke or someone else.

The Chairman: The strike was in '47?

Mr. Johnson: That's right.

Mr. Edises: Call Mr. Burke.

WILLIAM BURKE, called as a witness on behalf of the Union, having been first duly sworn by the Reporter-Notary, was examined and testified as follows:

[fol. 244] Direct examination.

By Mr. Edises:

Q. Your full name, please.

A. William Burke.

Q. You are the business agent of Local 225?

A. Yes.

Q. Were you in June of 1949 also?

A. Yes.

Q. Now I am going to ask you about the negotiations that have been referred to in the course of the testimony.

The Chairman: May I ask one question preliminarily. Are you employed at Cutter Laboratories?

The Witness: No, sir. I am employed by the Union.

The Chairman: I mean, you are not employed in any plant. The business agent duties take your full time?

The Witness: Yes.

The Chairman: Will you describe that job to me just as you have described the other one?

The Witness: I would be given requisitions, purchase requisitions, which I typed onto purchase orders. The requisition, when it came to me, had on it the name of the vendor from whom we were going to buy the material, whatever it was, and what was required—the amount required. Also any other notations that the person who was requisitioning material might want to make concerning, well, what wasn't wanted, for example—brands that [fol. 224] might not be wanted, or something of that kind. I would type that onto the purchase order; the purchase orders after they were typed were given to the purchasing agent, who looked them over and signed them. Then they were given back to me and I broke them down. There were five or six copies to each purchase order. I would break them down and mail out the correct number of copies. There were two to be mailed out to the vendor and one copy went to one department, one to another, one in one kind of a file and one in another kind of a file. And I was responsible for routing them and filing them. In addition, I filed the requisitions, disposed of the duplicate copy of the requisition which went back to the ordering department. And I did general typing for the department—copy work.

The Chairman: Letters?

The Witness: Letters, yes.

The Chairman: I think that is all. Thank you.

Arbitrator St. Sure: I do have a couple of questions now, if I may.

In connection with Mr. Francis McTernan, Jr., did you know him in college?

The Witness: No.

Arbitrator St. Sure: You met him after you left college?

The Witness: Yes.

Arbitrator St. Sure: And did you know Dr. Berke while you were in college?

The Witness: No.

[fol. 225] Arbitrator St. Sure: You met him since?

The Witness: Yes.

The Witness: You can say that!

The Chairman: You have no other employment? That is what I am getting at.

The Witness: No, sir.

By Mr. Edises:

Q. When did the Cutter wage negotiations open in 1949?

Mr. Johnson: We object to that, Mr. Chairman. That is already in evidence by exhibit.

The Chairman: The opening letter?

Mr. Edises: It is just a matter of putting it all in one place.

The Chairman: It is preliminary. The letter would control.

[fol. 245] Mr. Edises: I agree.

The Chairman: Go ahead.

A. The negotiations were opened by letter from the Union after vote of the membership, and the letter was sent on June 9 1949, signed by myself.

By Mr. Edises:

Q. And its main demand was what?

A. A twenty-cent-an-hour wage increase. That was the only thing that the contract could be opened on.

Q. All right. Now, did you follow that letter up with any meetings with the Company?

A. The first meeting was held June 27 due to the—the delay being due to the absence of Mr. Beckley.

Mr. Johnson: I object to the volunteer statement as to the reason for the delay. It is not very material.

The Chairman: What is the materiality? He seems to be quite often absent.

Mr. Johnson: Mr. Chairman, there are two things. May I just cut in here?

The Chairman: Yes.

Mr. Johnson: We have gotten away from that long statement that was allowed as an exhibit by Mrs. Walker. We were not given any copy of it.

The Chairman: Weren't you?

Arbitrator St. Sure: Now, I think you stated that you had memory of speaking to one of these gentlemen, asking them ~~not to mention your law degree~~. Which one was that, do you recall?

The Witness: I think it was Mr. McTernan.

Arbitrator St. Sure: You weren't sure whether you mentioned that to Dr. Berke or not?

The Witness: That's correct.

Arbitrator St. Sure: Did you receive or see a copy of the letter that Mr. McTernan wrote in your behalf?

The Witness: No.

Arbitrator St. Sure: Did you discuss it with him after it was written?

The Witness: No.

Arbitrator St. Sure: Did he tell you what he had said in it?

The Witness: No.

Arbitrator St. Sure: But before he wrote it you did tell him you had withheld certain information from Cutter Laboratories in connection with your education and background?

The Witness: That's my recollection.

Arbitrator St. Sure: Did you ask him what type of questions the Cutter Laboratories had asked of him in connection with the reference that they had asked him to give concerning you?

The Witness: I never talked to him after I called him to tell him that I had given his name. I didn't know—[fol. 226] I never spoke to him after he got the letter from Cutter Laboratories, in other words.

Arbitrator St. Sure: That is, you didn't know that one of the questions specifically asked in connection with the inquiry that the Company made was the matter of honesty?

The Witness: No.

Arbitrator St. Sure: But you did tell Mr. McTernan that you had withheld information in the application you had made?

The Witness: That's—

Mr. Edises: Just a moment. I want to object to the question.

In the first place, it has been asked and answered. In

the second place, it is a misstatement of the testimony. Her original testimony was that she did not recall, and I believe that she has since qualified her answer in the same way. So I submit that there is no point in pressing her recollection further on that point.

The Chairman: Well, she can answer the question. It seems to me—

Mr. Edises: If she recalls.

The Chairman: It seems to me is it a proper question. Read the question, please.

(Question read.)

The Witness: (Continuing) I told one of the two. I remember calling both of them and telling them that I had given their names as references, and I do remember telling one of them at least that this had occurred. I don't remember which one, and it may have been Mr. [fol. 227] McTernan.

Arbitrator St. Sure: And your recollection, as I recall the other day, is that it was Mr. McTernan and not Dr. Berke; is that correct?

Mr. Edises: Just a moment. I submit that the record speaks for itself on that point.

Arbitrator St. Sure: Very well. I will withdraw my question on that score.

Did you tell whichever one of them it was that you mentioned this subject to why you had withheld information from Cutter Laboratories?

The Witness: I don't specifically remember. I suppose I did.

Arbitrator St. Sure: Do you recall whether either of them asked you why?

The Witness: No.

Arbitrator St. Sure: Do you recall specifically suggesting or asking either one of them that they assist you in withholding this information by not disclosing their knowledge of you?

The Witness: No.

Arbitrator St. Sure: But that was the purpose of your giving them the statement, wasn't it, when you called in, saying that you had withheld the information?

Mr. Edises: I will be glad to have it copied for you. I only have one copy. This is the carbon.

Mr. Johnson: May it be stipulated that if we adjourn to [fol. 246] night I can take the copy here and have one made at my office and bring it back? I don't like to let these documents get away, because I find by experience you never get a hold of them.

Mr. Edises: Well, I will have no objection.

The Chairman: Why don't you let him have that copy? He will give it to you tomorrow. You have a duplicate original here.

Mr. Johnson: One other thing with respect to documents. I want to apologize. I was in error in stating that this letter on the opening of the negotiations was in evidence. It is not. The letter in evidence is the '47 opening letter.

Do you want to put in the '49 letter since he has referred to it?

Mr. Edises: I don't think it is particularly material.

The Chairman: Do you have it?

Mr. Edises: Do we have it here?

Well, I can't seem to lay my hands on it.

Mr. Johnson: Do you want to put it in and reserve a number for it as Union's—

The Chairman: Let's get it.

Mr. Edises: I have no objection.

The Chairman: Maybe you (indicating Mr. Johnson) have it. Maybe Mr. Johnson has it.

The Witness: The Company has the original.

Mr. Wagner: The original is in our file over at the plant.

Mr. Edises: I don't think it is particularly material.

[fol. 247] The Chairman: Let's pass on.

By Mr. Edises:

Q. All right. Then the first meeting was June 27. What was the substance of that meeting?

A. We told Mr. Beckley that our demand was a twenty-cent hourly increase, and took about fifteen or twenty minutes to give them our reasons as a preliminary to negotiations. And Mr. Beckley stated that there was no provision in the budget for an increase; however, the Company would be willing to give us the reasons in detail at

The Witness: Yes.

Arbitrator St. Sure: Mr. McTernan mentions in his letter that he had knowledge of your scholastic standing in college. You say you didn't know him in college. Had [fol. 228] you discussed with him your scholastic work?

The Witness: I may have.

Arbitrator St. Sure: What actual relationship had you had with Mr. McTernan? I mean, What kind? Has it been social contacts or business contacts?

Mr. Edises: That is objected to as immaterial.

The Chairman: Overruled.

The Witness: Social contact.

Arbitrator St. Sure: Had you ever had any dealings with him involving financial transactions or matters that might involve the question of honesty?

The Witness: I think my entire relationship with him had been a social one.

Arbitrator St. Sure: I have no other questions.

The Chairman: Have you anything?

Arbitrator Heide: No.

The Chairman: That is all. Thank you.

Mr. Johnson: Could I ask a few questions? Would you entertain a few questions following up on one or two of yours?

The Chairman: Yes.

Reecross-examination.

By Mr. Johnson:

Q. Mrs. Walker, in answer to questions by the Chairman you stated in some detail the work that you did in the plant when you were a label clerk from October 10 1946 until what you said was sometime about two years later. During that entire period from about the 15th of April of '47 on to the time when your services as label [fol. 229] clerk ended you were also either shop steward for the Union or, as I think you called it, chief—What was the other title?

A. I was the shop chairman during part of that period.

Q. And the other title was—

A. I don't believe I was chief steward at all during that period.

subsequent meetings. And the meeting lasted, I would estimate, around a half-hour or less.

Q. Now, did the Company make any counteroffer at that time?

A. No. The Company's counteroffer was, No increase.

Q. All right.

A. —at the initial meeting.

Q. All right. When was the next meeting, as you recall?

A. July 5.

Q. And what in brief occurred at that meeting?

A. Well, the Company then began its exposition of why they couldn't give us an increase through introduction of a lot of statistics and charts, and so on; and, as I recollect, Mr. Wagner gave the chart talk. It wasn't completed at that meeting.

Q. When was the next meeting?

A. About a week later.

Q. Sometime in July?

A. July 12.

Q. And in brief what occurred at that meeting?

[fol. 248] A. The Company continued to complete its answer or, rather, gave its reasons for their original counterproposal of no increase through statistics and Company production and rate of profit, and et cetera, et cetera.

Q. There was no abandonment of its original position of no increase?

A. No.

Q. All right. When was the next meeting?

A. The next meeting was in August; I think August 4. I might be wrong.

Q. And what—

A. It was around that time.

Q. Briefly, what occurred at that meeting?

A. I think the Company finished up giving its reason for not wanting to grant us an increase. And I think at that time we rebutted the Company's argument as to why they should give an increase, as to why our people we represented should get a wage increase, and pointed out some fallacies which we believed to exist in the Company's position, recognizing some features of the Company's argument

to be valid but, on the other hand, counterposing the problems of the workers and suggesting that a compromise will have to be effectuated because we could not be content with no increase.

Q. As I understand it, then, the Company did not at that meeting change or modify its position—

A. No.

[fol. 249] Q. —in any degree, but you introduced the possibility of being able to ~~compromise~~ to some extent?

A. Yes. We indicated that we would like the Company to give us a proposal other than a blank refusal, and we indicated we were willing to compromise.

Q. What was the next meeting?

The Chairman: Did you name a figure?

The Witness: No. Because there was nothing on the table to start working from. We had put the demand of twenty cents on the table; the Company said, "No".

Aribtrator St. Sure: Well now, do we have to have this? It sounds like a bargaining negotiation.

The Chairman: All I want to know is, Did you name a figure?

The Witness: No. But we—

Mr. Edises: I submit it is merely ample response to a question. Very ample.

The Witness: I am sorry.

The Chairman: His name is Burke and he likes to answer a question and argue a little bit too.

Mr. Edises: Halfway between zero and twenty. I don't know what it is.

By Mr. Edises:

Q. What was the date of your next meeting?

A. The next meeting was later in August, but it was not directly on the question of wages. It was called for another reason—a grievance. But the full negotiations committee had that grievance under consideration, and towards the [fol. 250] end of that grievance meeting—Mr. Beckley wasn't present at that meeting; Mr. Cutter was. And Mr. Cutter asked us to give very serious consideration to dropping our wage demand. I'm not sure whether at that time it was suggested reopening at a later date or not. I

Q. As shop chairman you did carry on certain other activities in the plant other than your duties as label clerk, didn't you?

A. Yes.

Q. Would you tell us in somewhat the same detail what you did in that capacity?

A. When a grievance arose in a department a steward would contact me and ask to discuss the grievance with me. Sometimes this occurred. So I would advise with the stewards on grievances arising in their department. If the grievance was not settled at the department level, I was responsible along with the chief steward for writing up the grievance and filing it with the personnel department and then following through with the personnel department on discussions of the grievance and future settlement of it.

Q. And where did you "consult", as you term it, with these departmental shop stewards?

A. In various places. Sometimes in the department itself; sometimes in the cafeteria or the restroom; sometimes at a union meeting; sometimes outside the plant.

[fol. 230] Q. In carrying out that activity during that period of time you had access to all of the various departments in the plant other than administrative, executive offices, didn't you?

A. Yes.

Q. In other words, your performance of that work or duties or activity was not limited to sitting at that desk, as you told us about, checking proof?

A. That's correct.

Q. You went, for instance, into the penicillin production department, didn't you, to consult with the department shop steward there?

A. Yes.

Q. You went into the various parts of the Laboratory where blood fractions were being processed?

A. Yes.

Q. You went into the various departments where labels were being placed on blood fractions and on penicillin bottles?

A. Yes.

Q. In other words, in that capacity, aside from your label-clerk duties, you had access to all of the various departments and facilities of the plant, except possibly the administrative offices?

A. With some exceptions. There were some parts of the plant that I never got into for one reason or another. Either my business didn't take me there; it was too far from the main plant to get me to it. But generally speaking, yes.

Q. Well, was there any rule or order given to you by the [fol. 231] Company at any time as to any specific parts of the plant that you were to stay out of in connection with your union duties?

A. No.

Q. No limitation at all as far as the Company was concerned?

A. I don't recall any.

Q. As a matter of fact during that period of time at various times you actually did have access to and went into all of the various departments of the plant, other than possibly that space reserved for men or something of that sort?

A. No, there were a number of places that I didn't, but—

Q. Simply because you didn't have the occasion to?

A. Well, I am thinking particularly of penicillin fermentation. There are many parts of that operation that I just couldn't get into. Had no reason to and I just never got there.

Q. When you say that "(you) couldn't get into", you don't mean that it was barred to you or that anyone to your knowledge had been given orders to keep you out?

A. No.

Q. Now, when did you say that your service as shop chairman terminated?

A. In April of 1949.

Q. In April of 1949. And that would have been about the time that you were transferred to the purchasing department; right?

A. I think it was after the time I was transferred.

don't recollect that clearly. But Mr. Cutter did start talking about our negotiations and "Where are we going from here?" And I told him that it was a very serious situation and I couldn't predict where we were going "from here"; we would have to consult with our membership.

Q. Now, you testified, I think, to four meetings. Is that correct?

A. Yes. — Approximately.

Q. From June through August?

A. Yes.

Mr. Johnson: Was that the August 12th meeting he just told us about?

By Mr. Edises:

Q. Was it?

A. I would say it was a little later than that.

Mr. Johnson: He said Mr. Beckley was away. That will identify it.

Mr. Edises: Well, —

The Witness: It was sometime in August. There were two meetings in August, to the best of my recollection.

By Mr. Edises:

Q. And you are speaking about the last of the August meetings; is that correct?

A. Yes. And it was the meeting where we discussed a [fol. 251] grievance primarily and it was after we disposed of the grievance that Mr. Cutter then raised the question on "Where are we going on the wage issue?"

Q. I see.

A. And that's how we got to talk about the wage issue.

Q. Up to that time, then, you had put your demand on the table and the Company had come back with no counter-proposal except "No increase"; is that correct?

A. That's right.

Q. Now, what was the next stage in the negotiations after this meeting?

A. We had a special meeting of the membership right after Labor Day. Our meetings are usually on Wednesdays. It was the Wednesday after Labor Day. And we

Q. Afterwards. During the early months, then, when you were in the purchasing department your union position [fol. 232] and the duties that you previously outlined continued to be about the same, didn't they?

A. Yes.

Q. Then when you were promoted to this new position, what was the title of it?

A. It wasn't a promotion, but I was elected as chief shop steward.

Q. You were elected as chief shop steward?

A. Yes.

Q. And how long did that continue?

A. Up until the time I was discharged.

Q. In other words, from approximately October of 1948 until October of 1949?

A. April of '49 until the time I was fired.

Q. April of '49 until October '49. Approximately six months. Now tell us generally the work and duties that you performed in that capacity.

A. Well, as to grievances it was substantially the same. The shop chairman and the chief steward generally divided the duties as to grievances and as to the other matters that came up that needed to be handled in the plant. Substantially the duties inside the plant were the same. Maybe I was a little more concerned with the grievance work than I had been before and less concerned with certain other things.

Q. But you continued to have access to all of the various departments of the Laboratories and the plant?

A. Yes.

[fol. 233] Q. And after your taking over these new duties the Company did not lay down any orders or restrictions as to areas you were to keep out of?

A. No. Could I qualify my answer to a certain extent?

Q. It is your answer, not mine.

A. I was never told to keep out of certain areas. During one period of my tenure of office I was required to keep a calendar of the places where I was going to go when I left my desk and how long I expected to be there. But that was the only limitation.

Q. That was because of some discussion or argument

over the fact that somebody contended you were spending too much time away from your desk; was that it?

A. Apparently that was it.

Q. By the way, when you took over this new union position, who took your old position?

A. Don Rightmyer.

Q. Don Rightmyer?

A. Yes.

Q. He is still performing that duty?

A. No. There has been another election since then.

Q. I see. Was there any other change when you took the new union position with respect to limitations upon your right to go about the various departments and your access to all of the departments?

A. No.

Mr. Johnson: I think that's all.

[fol. 234] Further Redirect Examination.

By Mr. Edises:

Q. Was all this visiting during working hours?

A. Not all of it. Some of it was. Most of it was.

Q. Was any part of it before or after the operation hours of the plant?

A. Some of it.

Q. In what respect?

A. Well, many times I would—Let me start over again. There was a time limitation on how much time I could spend during working hours on my union duties, which was supposed to average 45 minutes a day.

Q. That was by agreement with the Company?

A. Yes. And—

The Chairman: Is there anything in the Agreement about it or is it just a matter of practice?

Mr. Edises: Yes, Mr. Chairman. It is provided in Article I, Section 4 of the contract. It says:

“The stewards shall be allowed reasonable time to spend on the handling of grievances.”

The Witness: In order to get all the work done I would frequently see people before and after working hours, inside the plant. I would catch them just before they went on the job or just as they were leaving the job.

By Mr. Edises:

Q. And during this entire period from the time that you started working for the Company until you were discharged, were the Company's operations substantially the same?

[fol. 235] A. Substantially, yes.

Q. No material change of any kind in their operations?

A. No.

Q. And were there employees working in these various departments that you went in?

A. Yes.

Q. And supervisors were present?

A. Yes.

Q. I don't know whether I asked you what you got paid for your work in that second job. What did you make there?

A. The same. I had the same rating as I had on the label clerk's job: senior clerk.

Q. The same pay?

A. Well, subject to the fact that at every union negotiation pay was raised, but it was the same rate of pay.

Q. Oh. You mean the Union got some wage raises?

A. Yes.

Mr. Edises: Oh. I am glad that came out.

I believe that is all.

The Chairman: Anything further?

Arbitrator St. Sure: No.

Arbitrator Heide: No.

The Chairman: Thank you.

(Witness excused)

Mr. Edises: I will call Mr. Wulff.

Will you take the stand, Mr. Wulff.

[fol. 236] T. Y. WULFF, called as a witness on behalf of the Union, having been first duly sworn by the Reporter-Notary, was examined and testified as follows:

Direct Examination.

By Mr. Edises:

Q. Mr. Wulff, are you an officer of Local 225?

A. Now, yes.

Q. Yes. What is your job?

A. Secretary-Treasurer.

Q. Were you employed by the Company on October 6, 1949, the day that Doris Walker was fired?

A. Yes, I was.

Q. Were you called to a union meeting in the shop after she was fired?

A. A union meeting in the shop?

Q. I don't mean a union meeting. I should say an employee meeting.

A. Yes.

Q. Was that called by the Company?

A. It was.

Q. What Company representatives spoke to that meeting?

A. As I recall, it was Mr. Cutter and Mr. Beckley.

Q. Did they read that statement that has been read here, that is, the statement that was read to Mrs. Walker when she was fired?

A. Yes.

[fol. 237] Mr. Johnson: I object to that as calling—I don't want to trifle over details.

The Chairman: Let me see the statement.

Mr. Johnson: That was Union Exhibit No. 5. That is the one to which I am referring.

The Chairman: Here we are.

A. (continuing) That is as I recollect it.

By Mr. Edises:

Q. That statement, Union Exhibit 5, was read to the assembled employees?

A. It was.

reported—I reported on behalf of the negotiations committee, and I had to give a detailed report on the negotiations all over again. We had been periodically reporting—Do you want me to go into that?

Mr. Johnson: I don't want him to go into Union meetings. I sat by because I don't want to burn up a lot of time with the objections.

The Chairman: He is straying a little bit away from the question.

The Witness: O. K.

Mr. Edises: Yes. I think it is perfectly proper to talk about a Union meeting which was called as part of the negotiations. It is customary for unions to call meetings [fol. 252] of their membership to report on the stage of negotiations.

The Chairman: Go ahead with the next question. Let's not argue about something of that kind.

By Mr. Edises:

Q. All right. You held a special meeting of the Union; is that correct?

A. That's right.

Q. On what issue?

A. The primary issue being the wage negotiations. And it was advertised that we were going to recommend to the membership, that is, the negotiating committee would recommend to the membership, ways and means of increased membership support to the negotiations.

Q. Well now, what does that mean?

Mr. Johnson: I object to that as calling for the opinion and conclusion of the witness on a collateral matter.

The Chairman: Well,—

Mr. Edises: Suppose—Excuse me, Mr. Chairman.

The Chairman: I will overrule the objection. He is qualified to express an opinion and conclusion about that.

Read the question, please.

(Pending question read.)

A. That could mean anything up to and including strike action, except that under the rules of our organization we

have to specifically advertise in advance that a strike vote would be called for at a special meeting called for that purpose. But that was not the advertised purpose of the meeting. We left it open broadly to get as full attendance of the [fol. 253] membership as possible and to leave the question wide open for discussion of how the membership after hearing a report of the negotiations could support the negotiations to a greater extent and also to advise the negotiating committee on next procedures after the negotiations committee had made its recommendation.

By Mr. Edises:

Q: Were any concrete measures voted at that meeting of support?

A: There were two.

Mr. Johnson: I object to the form of the question. I think there is a very simple way to get at that. "Were any motions or resolutions voted?"

Mr. Edises: I am trying to indicate the subject matter and save time, that's all.

The Chairman: All right. I will overrule the objection. Read the question, please.

(Question and partial answer read.)

Mr. Edises: Go ahead.

A. (continuing) One was to express full confidence in the position of the committee to continue to press for a wage increase. Secondly, the recommendation of the committee to request intervention of the Federal or State Conciliation Service to attempt to mediate the dispute was approved by the membership, and the committee was so instructed.

By Mr. Edises:

Q. All right. Was there any discussion of strike?

A. There was throughout the entire course of the negotiations, after the first meeting where we were told bluntly there was no money.

Arbitrator St. Sure: The question was addressed to this

meeting. Was there any discussion of strike at this meeting?

The Witness: I don't know what—

Mr. Johnson: Mr. Chairman, may it appear on the record. I don't want to keep objecting. But isn't it clear that this is beginning to get colored with a lot of argument and conclusion by this witness under the guise of questions? He strays from one meeting to another. This specific answer is not responsive to the question and I ask that it be stricken.

The Chairman: Read the question.

(Question and answer read.)

The Chairman: The motion is granted.
Read the question, please.

(Question read.)

The Witness: Yes, there was.

By Mr. Edises:

Q. You mentioned a resolution to call in a conciliator. Was anything done pursuant to that resolution?

A. Yes.

Q. What?

A. The State Conciliation Service was asked to— Oh, let me see now. The State Conciliator intervened. They had kept in touch with us, pursuant to advice under the Labor-Management Relations Act of 1947 that a dispute was pending between us and Cutter Laboratories. That's [fol. 255] a requirement of the Act. And they were, both the Federal and State Conciliation Service, in touch with us and we, pursuant to the meeting, called up the State office and told them that we would like them to move at this time to see if they couldn't mediate the matter.

Mr. Edises: All right.

Mr. Johnson: Mr. Chairman, I move specifically that Mr. Burke's volunteer statement about what the law requires in conciliation be stricken.—

Mr. Edises: Well,—

Mr. Johnson:—And I would suggest generally, without my having to object, that the witness answer questions

specifically and not wander into collateral issues. I don't want to keep objecting, but he is wandering.

The Chairman: The motion is granted, and all the answer is stricken except the last sentence.

Mr. Edises: I'm not clear as to just exactly what has been stricken.

The Chairman: He was asked, as I recall it, if pursuant to the instructions he received from the meeting he did anything about calling in the mediation service. The last sentence of that long answer says, Yes, he did and that they came in.

By Mr. Edises:

Q. All right. Now, following the meeting, the plant meeting of the Union, which I think you said was on September 7, did the Company call any meetings of employees at the plant with respect to the wage question?

A. Not after.

[fol. 256] Q. Oh, I am sorry. About that time?

A. On the same day during working hours—

The Chairman: What day is that now?

The Witness: The Wednesday following Labor Day.

By Mr. Edises:

Q. September 7?

A. September—I guess it would be September 7.

The Company had meetings of its employees during working hours on the question of the negotiations and also with respect to our meeting, which was to occur right after work at 4:45 P.M. of the same day.

Q. Oh. Had your meeting been publicized in some way?

A. Yes. It was publicized by leaflet handed out at the plant gate, and the day before the meeting a loudspeaker equipment was used to remind the people, since it was just after Labor Day,—to remind the people to be sure and be down at the very important meeting the next day to discuss the question of support for the negotiations.

Q. And was it following this publicity that the Company held its meeting of employees at the plant?

A. It was the day after the loudspeaker was used to advertise the meeting.

Q. Now, what was the next step in negotiations after the calling in of the State Conciliator?

A. Well,—

Q. Did you have any other meetings with the Company during September?

[fol. 257] A. No.

Q. Why not?

A. We had gotten in touch with Conciliation, and Conciliation was interviewing both parties separately and was arranging for a meeting.

Q. During the month of September did the Company make any counterproposal of any kind other than "No increase"?

A. No.

Q. Did there come a time in the early part of October when the Union resorted to bringing its wage dispute to the attention of the public?

A. Yes.

Q. And specifically was anything done with respect to radio broadcast?

A. Yes.

Q. Can you tell us what was done in that connection?

A. Well, the first Sunday of October Sidney Roger—

Q. Would that be on October 2?

A. Yes, that's right. I remember that day.

Q. Go ahead.

A. October 2. Sidney Roger, during his broadcast at 11:30 over KGO, devoted part of his program to describing the dispute between us and the Company over the wage issue, and gave our position—the Union's position.

Q. Now, did the subject of that broadcast later become a matter of discussion at any meeting between Union and
[fol. 258] Company representatives?

A. Yes.

Q. And on what day?

A. A few days later. I think it was October 5th. I am quite sure it was October 5th.

Q. And you were present when Mrs. Walker testified to

the grievance meeting on that day where that subject was discussed?

A. Yes.

Q. Were you present at that meeting?

A. Yes.

Q. Can you state briefly what was said on the subject of this radio broadcast and by whom?

A. Yes. Mr. Fred Cutter asked Mrs. Walker whether she was responsible for the broadcast which, as I recollect, he said "dragged the name of the Company through the mud in public". He also asked me whether I was responsible.

Q. And what was Mr. Cutter's manner in speaking on this subject?

A. He was angry.

Q. Was any Company lawyer present at this meeting of October 5th?

A. Mr. Johnson.

Q. To your recollection had Mr. Johnson ever been present at any other grievance committee meeting?

A. None at which I attended.

Q. On the same day, October 5, 1949, did the Union resort [fol. 259] to any further publicity with respect to its wage dispute?

A. Yes.

Mr. Johnson: Mr. Chairman, on this subject I realize I have no right to preclude the gentleman, but if he wants to shorten it I will stipulate that on the question of that discussion in Mr. Cutter's office and on the question of the advertisement in the paper, his testimony will be substantially the same as Mrs. Walker's. But if he wants to go ahead, I realize that my offer is out of tune.

Mr. Edises: It would be about as short one way as the other.

Mr. Johnson: It is up to you. I merely make the offer. It has been covered rather adequately without much objection from me in Mrs. Walker's testimony.

By Mr. Edises:

Q. You heard Mrs. Walker's testimony on that point?

A. Yes.

Q. Is there anything else you want to add to it?

A. We placed ads in all three papers.

Q. The same ad that is in evidence here?

A. Yes. And it appeared on October 5 in the Tribune and the Berkeley Gazette, and I don't know whether the Richmond Independent carried it on October 5 or October 6, but I think it was on the 5th. We had asked that it be all run on the 5th.

Q. And this was the ad that referred to the Company's "low-wage policy"?

A. Yes.

[fol. 260] Mr. Johnson: Union Exhibit No. 3.

By Mr. Edises:

Q. And Mrs. Walker was fired the next day?

A. Yes.

Mr. Edises: Mr. Chairman, I believe that completes my direct, but since we have not had a recess would it be possible to let me look over my notes during a short recess?

The Chairman: Yes indeed.

We will take a recess.

(Short recess.)

By Mr. Edises:

Q. Mr. Burke, did the subject of Mrs. Walker's discharge thereafter come up in negotiations between the Company and the Union?

A. Several times.

Q. Will you give us briefly the substance of discussion on that subject?

Mr. Johnson: These are events happening after the discharge?

Mr. Edises: That's right.

Mr. Johnson: I object to that as being incompetent, irrelevant and immaterial.

Mr. Edises: I asked about—

The Chairman: Just a minute.

Overruled.

Mr. Edises: Go ahead.

A. At the first meeting with the Conciliator present it was suggested by Mr. Bjorne Halling, who came in to as-

[fols. 261-269] sist us in his capacity, as Secretary of the State CIO Council, that perhaps we had better trim down the two committees to a smaller size for the purpose of exploring the possibility of a peaceable settlement. Mr. Cutter at that time asked whether it was our intention to make the discharge of Mrs. Walker a part of the negotiations.

By Mr. Edises:

Q. What was your reply to that?

A. I said, No, not necessarily; that we had filed a grievance and will pursue the grievance channel on Mrs. Walker's discharge; however, we wouldn't mind talking about it, but our purpose was to settle the wage issue in our negotiations.

Q. And what was said by Mr. Cutter in reply to that?

A. I don't recollect that he made a reply.

Q. Were there any demonstrations at the plant in connection with Mrs. Walker's discharge?

A. Yes. The matter was reported to the unions in the area and the workers in shops belonging to those unions in the East Bay area, and the workers in a number of shops took positions of support to our efforts to obtain the reinstatement of Mrs. Walker and to our support in the wage negotiations. And they issued their own letters of support by members of their union distributing these messages of support at the plant gate to the employees of Cutter Laboratories on subsequent days over a period of a couple of weeks.

[fol. 270] Cross-examination.

By Mr. Johnson:

Q. Mr. Burke, when were you elected business agent of Local 225?

A. It was March 1948.

Q. And you succeeded a man by the name of Lou Fowlks, did you not?

A. That's what I understand.

Q. That name is spelled F-o-w-l-k-s; is that right?

A. Yes, sir.

Q. You didn't participate in the 1947 negotiations at all, did you?

A. No, sir.

Q. You were neither the business agent nor a member of the negotiating committee during that 1947 negotiation at Cutter Laboratories?

A. No, sir.

Q. So that your first participation was during this 1948 [fol. 271] series of meetings to which you have referred?

A. 1948 negotiations.

Q. You participated in those?

A. Yes.

Q. All right. Now coming to the '49 negotiations. You said that there were a series of meetings commencing in approximately July of 1949?

A. June 27, Mr. Johnson.

Q. June 27. And at any time between June 27 and, say, September 14—that is the day when you said that your Union had a meeting and considered taking action to give additional support to the negotiating committee—

A. It was the Wednesday after Labor Day, and I would place it around September 7.

Q. September 7. All right. From June 27 down to that date, had the Company ever been notified by you as business agent or by any member of the negotiating committee that your negotiating committee was going to go back to the Union members and recommend that strike action be taken?

A. There was a notice sent to the Company which was a copy of a notice sent to the Conciliation Services that a dispute was pending between us on the wage issue.

Mr. Johnson: I ask that the answer be stricken as not responsive and that the witness be—

The Chairman: Granted.

Mr. Edises: May I be heard on that?

[fol. 272] The Chairman: Yes.

Mr. Edises: The purpose of that notice is to free the Union to strike. That was—

The Witness: Yes.

Mr. Edises:—the substance of his answer.

The Chairman: Read the question and answer now.

(Question and answer read.)

The Chairman: That isn't a responsive answer. It might be an explanation of a yes-or-no answer, but—

Mr. Edises: Mr. Chairman, he said that a copy was sent to the Company.

The Chairman: Yes. But he still hasn't answered the question.

The Witness: May I ask a question here?

Mr. Edises: No.

The Chairman: Let me put a question to you.

Is that the only notification along those lines that was sent to the Company?

The Witness: We discussed during the negotiation—I don't know whether the word "strike" came up during the meetings with the Company or not, but that always was present in the atmosphere.

Mr. Johnson: Again I ask that the statement be stricken as not responsive.

The Witness: Oh, excuse me. I now recollect specifically that Mr. Cutter said that even were we to strike, it would [fol. 273] be of no avail because the Company could not afford to grant the wage increase; and even assuming that the warehouse strike, which was then in progress, which we said might set a pattern,—Mr. Cutter said, Even if that strike were settled with a wage increase, that it would be of no avail; and if we resort to strike action, it would be of no avail.

Mr. Johnson: Again I ask that the entire answer be stricken as completely irresponsible to the question.

The Chairman: All right. Now, just a moment.

Is that your complete answer to the question? Do you recall the question?

Read it again, please.

The Witness: Yes, I recall it.

The Chairman: Read the question once more, please.

(Question again read.)

A. (continuing) The answer is, No.

Mr. Edises: That is what he was trying to say, Mr. Chairman.

Arbitrator St. Sure: It sounded like something that he was trying not to say.

The Witness: May I explain?

The Chairman: Wait a minute.

We will strike all the previous testimony. The "No" answer stands.

Now you may explain.

The Witness: I don't know whether you know anything about wage negotiations, but practically everybody in this [fol. 274] room knows what goes on in negotiations. There was going to be a termination of the negotiations either through consent negotiations or a strike, after which agreement is reached. And the possibility of a strike was always there. There was always the possibility of strike mentioned in the plant. In the negotiations there was possibility of strike action, but I wasn't authorized to serve any formal notice on the Company that we were going to take strike action until the Union members had voted for it.

Furthermore, it is not a practice of, in negotiations, to advise the Company what we are going to recommend to the membership. Sometimes that is done. Like we say "Well, we think we got an offer we can live with. We'll recommend it to the membership". Or sometimes it is said "We will recommend strike action". But in most cases we don't tell the Company what our thinking is in the negotiations committee. In fact, Mr. Cutter asked me, "Where are we going on the wage issue?" and I said "It is a very serious situation and we will have to deliberate upon it and consult with our membership on it."

Arbitrator St. Sure: I take it the answer is still, No.

Mr. Johnson: If he is through, which I am not sure that he is, I want to move that everything after the word "No" be stricken as in no way a qualification or explanation of the answer to that specific question.

Mr. Edises: Well, Mr. Chairman, I—

The Chairman: I will deny the motion.

Ask the next question.

[fol. 275] By Mr. Johnson:

Q: Now, Mr. Burke, moving on from September 7, down through October 18, 1949, did you at any time ever advise the management representatives that your Union negotia-

tion committee was going to go to the members and request approval or sanction of a strike?

A. No.

Q. Did you at any time from October 18, 1949, up to the date when the contract was actually signed ever advise the management representatives that your negotiating committee was going to go to the membership and request strike sanction?

A. I don't want to go into any long dissertation.

Q. I don't want you to.

A. The answer cannot be in a categorical "yes" or "no" manner, because the matter was discussed with Mr. Cutter and Mr. Beckley and yourself and our subcommittee on things like "Maybe you can break the strike, but how you make out", and so on and so forth. We were trying to see if we could find means of achieving a peaceable settlement. The strike question of our going to the membership and saying "Let's hit the bricks" is always there. Now, I can't answer "yes" or "no" to that question.

—Mr. Johnson: I ask that the entire answer be stricken as not responsive to the question.

The Chairman: Read the question, please.

(Question read.)

Mr. Edises: Now, Mr. Chairman, in effect what he did was to state that by implication they did that very thing. [fol. 276] That is what he was trying to get at.

The Chairman: It seems to me we are belaboring something here unnecessarily. It is pretty plain that his answers to these questions is "No" but that he wants it made plain that the question of a strike was a brooding omnipresence in the sky at all times which I suppose as a matter of common knowledge it would be.

Mr. Johnson: That is what I assume, but I also assume

—The Chairman: All you are talking about here is—

Mr. Johnson: What he told the Company.

The Chairman: No. You are talking about formal notices and formalities. And as far as I am concerned I don't doubt but what there was talk about a strike.

Mr. Johnson: With the Company representatives?

The Chairman: I say, I don't doubt from what he says here that there probably was. But I also don't doubt but what his answer to all these questions that you are asking here is, No, with the explanation that he has given.

By Mr. Johnson:

Q. Now, Mr. Burke, entirely aside from what the Union negotiating—

The Chairman: You will probably get a "yes" answer if you ask him if the word "strike" was ever used.

By Mr. Johnson:

Q. Aside from what you as business agent or the Union negotiating committee said to the management representatives during negotiations, did you at any time from June 27, 1949, down through the date when the Union meeting [fol. 277] was held at which the contract was approved by your members ever go before a union meeting and request that the members vote strike sanction against Cutter Laboratories during the 1949 negotiations?

A. No.

Arbitrator St. Sure: What was the date of the ratification? Could you give us that?

The Chairman: December, wasn't it?

Arbitrator St. Sure: No. The signing was one date and then there is the date of ratification.

By Mr. Johnson:

Q. Do you know the date when the Union met and approved the contract, Mr. Burke?

A. November 30.

Mr. Johnson: November 30.

The Chairman: The day before it was signed?

The Witness: A day or two.

By Mr. Johnson:

Q. Now, is it not true, Mr. Burke, that at the time when Mrs. Walker was discharged, namely, on October 6, 1949,

the representative of the State Conciliation Service, a Mr. Tom Nicolopoulos, was conferring separately with the management representatives and the Union representatives?

A. Yes.

Q. There had not been any negotiating meetings between representatives of the Company and the Union since what date?

A. The latter part of August, I think.

Q. Maybe I can help you. Wasn't there a meeting on August 31?

A. The latter part of August, to the best of my recollection.

[fol. 278] Mr. Edises: If that is what your records show, we will so stipulate. Do they?

Mr. Johnson: That is what a note here shows.

Mr. Edises: All right. It is not my note but the Company records.

By Mr. Johnson:

Q. Now, isn't it true that at that meeting on August 31, which was about five weeks before Mrs. Walker was discharged, the only thing that was discussed was the question of some special provision for what was referred to during the meetings as the subject of jaundice?

A. The wage issue was also talked about.

Q. At the meeting on August 31, the last one prior to the discharge of Mrs. Walker?

A. I know of the meeting where we discussed the yellow-jaundice question. At the end of that discussion Mr. Cutter broached the question of our wage negotiations and "Where are we headed?" Now, I don't recollect now whether we had two meetings on the yellow-jaundice issue and whether he referred to the wage negotiations at the second meeting or the first meeting.

Q. Mr. Burke, isn't it true that the last negotiation meeting at which the question of wages was discussed between the management representatives and your Union Committee prior to the date of the discharge of Mrs. Walker was on July 12, 1949?

A. No, I wouldn't say that. There were meetings held in August.

Q. But weren't all of those meetings in August, namely, on August 9, on August 18, on August 24 and on August [fol. 279] 31, devoted exclusively to discussions of the question of jaundice?

A. Not to my recollection.

Q. You don't recall it that way?

A. No.

Q. Did you make any memoranda at the time?

A. Yes, I think I have.

Q. Mrs. Walker was there, wasn't she?

A. I don't know whether she was at every one of the meetings. I think she was absent from one. The plant was shut down for a couple of weeks in the latter part of July. Nelline Smith, the secretary of our committee, who kept notes, was absent because she took a vacation. I think it ran over into August.

Q. Mrs. Walker has a habit of keeping rather extensive notes of her meetings with Mr. Beckley. He was at these meetings, wasn't he?

A. The yellow jaundice?

Q. Yes, sir. In August.

Mr. Edises: No. Mr. Beckley?

Mr. Johnson: Mr. Beckley, at what he calls the "yellow-jaundice" meetings, which I referred to as being in August.

A. Mr. Beckley was present at one, I think, and then Mr. Cutter was present at another and Mr. Beckley wasn't.

By Mr. Johnson:

Q. Do you remember the date when the ILWU settlement was reached during 1949?

A. October 3rd, I think. That was the date of the return to work, I believe.

[fol. 280] Q. October 3rd, yes. Well, isn't it true, Mr. Burke, and don't you remember definitely that from the meeting on July 12, 1949 down through the long period when the ILWU negotiations were going on, and up and until after that settlement on October 3rd, or the return

to work on October 3rd 1949, the question of wages was never discussed in any so-called negotiating meeting?

A. I wouldn't say that. I would say that the matter of wages were discussed.

Q. Now, you made a reference to Sidney Roger. That is this radio broadcaster?

A. Yes, sir.

Q. He is sponsored on his radio broadcast by whom, if you know?

A. A number of unions in Northern California and individuals outside of the labor movement.

Q. Those are CIO unions to which you refer, aren't they?

A. Some are CIO; some independent.

Q. You made reference to the fact that after Mrs. Walker was discharged on October 5 there was a meeting at which Mr. Bjerne Halling appeared for the first time. Do you recall that?

A. Yes, sir.

Q. When was that meeting?

A. The first meeting with the Conciliator present.

Q. As a matter of fact, that meeting was on October 10, 1949, wasn't it?

A. Approximately.

Q. Don't you recall that at that meeting the Company [fol. 281] representatives, Mr. Beckley and Mr. Cutter, both stated to Mr. Halling and to you other representatives that the Company, as a demonstration that they had no animus or feeling against the Union as a group, would offer a two-year contract at the then-existing terms?

A. With no wage increase?

Q. That's right.

A. That's right.

Q. Yes. And do you recall at the time they also stated to Mr. Halling that they felt that in view of existing circumstances, including the disputes within your Union, that it was a demonstration by them that there was no feeling or animus against the Union and that the discharge of Mrs. Walker had nothing to do with their feeling towards the Union?

A. Did you say "dispute with our Union"?

Q. "Within" your Union.

A. "Within"?

Q. Yes, sir.

The Chairman: Read the question, please.

(Question read.)

The Chairman: You can answer that "yes" or "no". Did they say that to you?

A. Not within the Union, because I would have challenged them on that.

The Chairman: Well, did they say that to you?

The Witness: No.

[fol. 282] By Mr. Johnson:

Q. What did they say?

A. They said that "We want to show you that we are not out to break the Union as we hear we are charged, and we are willing to offer you a two-year contract at the existing terms".

Q. Is that all they said?

A. On this point, that's roughly my recollection of it.

Q. Now, that was the first meeting between the Company representatives and your committee since August the 31st; isn't that right?

A. I beg your pardon?

Q. That was the first meeting between the Company representatives and your committee since August 31 of '49?

A. The latter part of August; yes, sir.

Q. As a matter of fact, Mr. Burke, as one of the points that was finally agreed upon, didn't the Company agree to sit down with your representatives and work out the problem of cooperating and trying to bring certain employees who were then without the Union into Union membership?

A. Yes, sir.

Q. I show you here a document entitled "Addendum", dated December 1, 1949, between Bio-Lab Union, Local 225, signed by you and signed for Cutter Laboratories by Arthur K. Beckley, Vice-President, and ask you if you have seen that document.

A. Yes, sir.

Q. Now, if I may call your attention to that. You have seen that document before and signed this copy of it?

[fol. 283] A. That's my signature. Yes, sir.

Q. Calling your attention to paragraph 3 of this document dated December 1, 1949; I ask you if it does not provide as follows:—

The Chairman: Well now, just a minute.

Have you any objection to it?

Mr. Edises: I haven't seen it.

(The document referred to was passed to Mr. Edises.)

The Chairman: Do you have another copy of it?

Mr. Johnson: No, I do not have one, Mr. Chairman. I did not realize that this phase would be gone into, and we had to send out for the file.

By Mr. Johnson:

Q. I call your attention, Mr. Burke, to this document dated December 1, 1949. You will note that paragraph 3 says: "The Company and the Union recognize that the Union, as the exclusive collective bargaining representative of all the employees covered by the agreement between the Company and the Union, does render services in representing all said employees in collective bargaining. It further recognizes that it is unfair to have the present Union members alone bear the cost of union services performed on behalf of all the employees covered by the agreement between the Company and the Union, and that such costs should be distributed equitably among all of said employees. The Union members bear their share of such costs by the payment of initiation fees, dues and assessments. The Company agrees that pending the holding of a [fol. 284] union-shop election, it will join the Union in urging all eligible employees in the bargaining unit and all newly-hired eligible employees to become members in good standing in the Union and to continue to maintain such membership".

Do you remember the discussion on that?

A. Yes, sir.

Q. And it was as a result of discussion during negotiations that this paragraph 3 was drawn and put into this addendum?

A. Yes, sir.

The Chairman: What is the date of the addendum?

Mr. Johnson: The date of the addendum (I am sorry, I never gave it to you gentlemen for examination) is December 1, 1949.

The Chairman: Signed contemporaneously with the Agreement?

The Witness: Yes.

By Mr. Johnson:

Q. Now, is it not true that subsequent to that and pursuant to arrangement worked out with you and the negotiating committee; the Company sent to each one of the people who was then a member of the Union and who was included in the group referred to in paragraph 3 of the addendum just referred to a letter? Do you remember that?

A. To whom was this letter sent?

Q. To the people referred to in Article 3 of the addendum.

The Chairman: You mean people who weren't members of the Union?

Mr. Johnson: That's right, sir.

A. No. I think you have got the wrong letter.

[fol. 285]. By Mr. Johnson:

Q. My question was, Did they send a letter to the people?

A. No, sir.

Q. Did they hold discussions with the people?

A. Yes, sir.

Q. I present to you a letter here dated December 6 and ask you if you have seen that before or a copy of it.

A. I don't know whether I have seen it before. I may very well have seen it. Do you want me to go ahead?

Q. You have not seen this document?

A. I may have. I don't recollect specifically. I know what this letter intends to show.

Q. Do you recall, Mr. Burke, that within a week after

that contract was signed, the Company took action through the supervisors in the various departments to arrange to bring into the conference room in groups the various people who were not members of the Union and who were referred to in paragraph 3 of the addendum of December 11

A. Yes, sir.

Q. And do you recall specifically that during those conferences the Company officials, Mr. Beckley, Mr. Cutter and others, did urge these people, as provided in Article 3 of the addendum, to take action to bear their share of the union cost, if possible to join the Union?

A. Mr. Cutter was not present. Mr. Beckley and Mr. Wagner were present.

[fol. 286] Q. They did make such requests of those people, didn't they?

A. Mr. Beckley did; yes, sir.

Q. And during those discussions don't you know that they stated to those various people that they felt that the Union was rendering in behalf of the employees a valuable service and one that was to their interest and for which they should either join up or arrange to bear their share of the cost?

A. Substantially that's correct.

Arbitrator St. Sure: Were you present at these meetings or any of them?

The Witness: Yes, sir.

By Mr. Johnson:

Q. The Company as far as you know made no effort to exclude you from those meetings, did they?

A. No, sir.

Q. And isn't it correct that they cooperated with you in making the meetings available to your attendance so that you could present your side of the story and answer any questions?

A. I asked that those meetings be held, Mr. Johnson. Do you want to know the purpose of my asking?

Mr. Johnson: No.

I think that is all, Mr. Chairman.

The Chairman: Any redirect?

Mr. Edises: Yes. A couple of questions.

Redirect examination.

By Mr. Edises:

Q. Did the Union play any part in getting these concessions from the Company?

A. Which concessions?

Q. Well, these concessions.

A. Yes, sir.

By Mr. Edises:

Q. What steps did the Union take?

The Chairman: Just a minute, please.

Overruled. Answer the question.

A. Yes. We requested that the Company show some outward evidence to the employees that they were not intending to destroy our Union. Because the impression was created through the Company meetings held on Company time that the Company's feeling was that their employees [fols. 288-303] should get out of the Union, and we asked that some remedy be effected to cure such impressions.

By Mr. Edises:

Q. And when you speak of the "impression that was created", do you have reference to those meetings that were called by the Company in connection with the discharge of Walker?

A. That and the one prior to that.

Q. That is the one that was called after you announced that you were holding a special meeting on the wage issue?

A. Yes, sir.

Q. Did you ever tell the Company that you had given up your right to strike?

A. No, sir.

Mr. Johnson: What was the answer?

(Answer read.)

By Mr. Edises:

Q. Did you ever tell the Company that you wouldn't strike?

A. No, sir.

[fol. 304] JOHN WAGNER, called as an adverse witness on behalf of the Union, having been first duly sworn by the Reporter-Notary, was examined and testified as follows:

[fol. 305] Direct examination.

By Mr. Edises:

Q. What is your name?

A. John Wagner.

Mr. Edises: Mr. Chairman, I am calling Mr. Wagner under something which, if this were a formal legal proceeding, would correspond to Section 2055 of the Code of Civil Procedure or, in the absence of such procedure—

The Chairman: Well, as far as I am concerned you can cross examine your own witnesses.

Mr. Edises: He might not agree that he is my witness.

The Chairman: Well, you called him.

Mr. Edises: All right.

The Chairman: I don't suppose he is technically friendly.

Mr. Edises: He may be sensitive on that point, that's all.

The Witness: I think we ran into this situation once before.

Mr. Edises: Yes, I think we did.

By Mr. Edises:

Q. Mr. Wagner, you are associated with Cutter Laboratories?

A. That's right.

Q. And when did that association commence?

A. October of 1945.

Q. And in what capacity were you then?

A. Personnel department. Just working in the personnel department.

Q. And what was your title?

[fol. 306] A. I don't believe I had a title.

Q. What did your duties consist of at that time?

A. At the time I started, primarily classification work.

Q. And what do you mean by "classification work"?

A. Classification of jobs; putting them in their proper bracket; determining pay rates.

Q. Did you have any connection with labor relations?

A. I don't believe so at that time. Very nominal.

Q. How long did you remain in that post?

A. Well, I'm still doing that type of work.

Q. Has your position changed?

A. Oh, I have taken on additional duties from time to time.

Q. And when did you first take on any additional duty?

A. I suppose within a month after I was there.

Q. And what was that?

A. I haven't any idea, because I do many more things than that now. It would be hard for me to tell.

Q. What is your present position?

A. Personnel manager.

Q. Personnel manager. And how long have you been personnel manager?

A. Oh, as Doris put it, it is an indefinite sort of a thing. I would say two or three years.

Q. Two or three years. At any rate it dates back well before the discharge of Mrs. Walker?

A. Yes.

[fol. 307] Q. As personnel manager what do your duties consist of?

A. Oh, classification work; supervising training; providing such information and assistance as Mr. Beckley might desire on a specific problem. It could be a variety of things in the industrial relations field.

Q. In the industrial relations field; is that correct?

A. That's right.

Q. Does your work have any connection or bring you in contact with trade unions?

A. Yes, through the grievance procedure.

Q. What is your function in connection with grievance procedures?

A. Primarily to sit in on the second step of grievances.

Q. What do you mean by that?

A. Under the contract, after a grievance has reached the first step and if there is no agreement between the person bringing the grievance and department supervisor, then it goes to the second step, which consists of the person bringing the grievance and the Union representation and, then myself and possibly the supervisor or another member of the personnel department.

Q. Do you participate in negotiations?

A. To a certain extent.

Q. Do you participate in the discussion of relations with trade unions, trade union matters?

A. To a limited extent.

Q. Who has the primary authority in that field?

[fol. 308] A. Mr. Beckley and Mr. Cutter.

Q. Who is the person most directly responsible in that field?

A. I think Mr. Cutter is better able to answer that question than I am because, as I say, my functions in that particular regard are rather limited.

Q. Does one of the gentlemen to whom you referred have the title of Director of Industrial Relations or some similar title?

A. Mr. Beckley has the title of Vice-President in Charge of Industrial Relations.

Q. I am sorry.

A. Vice-President in Charge of Industrial Relations.

Q. I see. And how long has he had that title?

A. I haven't any idea.

Q. Have you been doing substantially the same work for the last three years?

A. Yes, in that I do general personnel-industrial relations work. It will vary all over the map.

Q. Do you recall when Doris Walker was hired? Do you remember that date?

A. Not specifically.

A. It was October 10 1946.

A. It could have been.

Q. At that time were you doing similar work?

A. As I said, my work has varied all over the map, depending upon what the particular problems are. I have in general no specific, continuous assignments such as the [fol. 309] employment manager would, for instance.

The Chairman: He is a handyman.

The Witness: I do what the boss tells me.

By Mr. Edises:

Q. Did you have any role in connection with approval of applicants for employment at that time?

A. My only function there was to check the classification of the jobs.

Q. Your initials, as I recall, appear somewhere on Mrs. Walker's application form: "J.W."

A. That's right.

Q. What does that mean?

A. That signifies that I approved of the classification of the job.

Mr. Johnson: May we have that original a minute.

By Mr. Edises:

Q. There has been testimony, Mr. Wagner, that about six months after Mrs. Walker was employed and almost immediately after she was elected as shop chairman she was investigated. You heard that testimony?

A. That's right.

Q. As a matter of fact you were also present when the same matter was explored at the hearing on her unemployment insurance appeal, were you not?

A. That's right.

Q. Are you familiar with the circumstances of that investigation?

A. Oh, somewhat.

Q. You know that she was investigated?

[fol. 310] A. Yes. It depends on your definition of "investigation".

Q. Well, you know that you had someone investigate her background?

Mr. Johnson: I object to the form of the question as far as it infers that this gentleman had anybody investigated.

The Chairman: Overruled.

The Witness: The question, please?

(Pending question read.)

A. I know that.

By Mr. Edises:

Q. What was the name of the outfit that did the investigating?

Mr. Johnson: That is objected to, Mr. Chairman, on the ground that, as has been stated by the complaining witness here, Mrs. Walker, she apparently contends that she was investigated and inquiry was made of her Communist activity. She refuses to answer questions on that issue when we present them, and yet these gentlemen who have precluded us from going into that now want to bedevil this witness about questions as to who made the investigation. And since this is the first of a series of questions on that subject, I interpose the objection that it is incompetent, irrelevant and immaterial until such time as an opportunity is allowed for us to explore that same issue without limit or reservation as far as Mrs. Walker is concerned.

The Chairman: Overruled.

The Witness: Retail Credit Company.

By Mr. Edises:

Q. Retail Credit Company?

[fol. 311] A. Company.

Q. And what instructions were given to the Retail Credit Company with reference to this investigation?

The Chairman: The same objection?

Mr. Johnson: Yes, except at greater length. He is getting now right to the heart of the Communist issue. That's what—

Mr. Edises: I would like to be heard on that, Mr. Chairman.

The Chairman: Well, let's take an executive session for a minute.

Mr. Edises: May I say before you go into executive session that I just want to make it clear that this goes to the very vital question of when the Company first had knowledge or belief of her being a Communist—which is the crux of our case.

Mr. Johnson: Before you have your executive session may I just make this brief statement so that you will have it before you:

We will not object at all to a full exploration of this question provided that we are accorded the same freedom on the Communistic issue. But this gentleman by his objection would preclude us from going into the issue at all. Now he wants to go into a lot of questions as to what they told the investigator and what the investigator did and whom he went after, and when he did it. And I agree with Mr. Edises. I think this is the very heart of the issue, the most pertinent issue.

Mr. Edises: May I say also, All we want to know is what the Company knew. Their question to Doris Walker, [fol. 312] "Are you a Communist?" is something that they were not interested in during the period of her employment. All we want to know is what the Company knew and when they first knew it or believed it.

The Chairman: All right.

(Short recess to permit of executive session.)

The Chairman: The Board has reached a conclusion and it is a unanimous conclusion of the Board.

We consider the ultimate question here to be, What knowledge, what data, what facts, what information, did the Company have before it when it concluded to discharge Mrs. Walker?

We consider it also to be material to know when the Company first came into possession of each fact or piece of information on which it acted. We do not see the materiality of the source of the information nor the source of the data, and it is our desire to limit the inquiry in that regard.

Now will you read the last two or three questions and answers, please.

The Reporter: "Question: What was the name of the outfit that did the investigating?"

The Chairman: The Board will sustain an objection to that question on its own motion.

What is the next question, please?

The Reporter: "Question. And what instructions were given to the Retail Credit Company with reference to this investigation?"

The Chairman: We will strike that question so that it can be reframed in view of the fact that we have stricken [fol. 313] the answer about the Retail Credit Company. That is our desire.

Now, if either one of you wants to be heard, you can be heard. We reached that conclusion in view of rulings that we have previously made.

Mr. Edises: I understand, I think, what your reasoning is, Mr. Chairman, but I am a little troubled about the possibility of separating the question of knowledge from the question of how they got the knowledge. I am quite sure that you do not intend to limit me in my cross examination, which is supposed to be an instrument of reaching the truth.

Arbitrator St. Sure: May I just interrupt there.

I think coming from the mouth of counsel who has objected strenuously to cross examination on subjects into which the Company wanted to go, you at least should try to be consistent in your position. That is what the members of the Board are trying to do.

Mr. Edises: You may be trying to achieve consistency, Mr. St. Sure, but there are fundamental differences that your statement ignores.

Arbitrator St. Sure: I am sure that that is true.

By Mr. Edises:

Q. Whatever the source of your information, I assume that you gave them certain instructions about what material you wanted them to check on, did you not?

Mr. Johnson: That is objected to upon the ground that it is incompetent, irrelevant and immaterial under the

Board's ruling. The document is here. What preliminaries [fol. 314] went before it are of no consequence.

Mr. Edises: What document?

The Chairman: I think that that is material. It seems to me it is material to ascertain what the Company was seeking to find out and what they did find out.

Overruled.

Mr. Johnson: Yes. May I state this, though, for the record: that we welcome full investigation on this subject provided that we are given the same unrestricted freedom or at least the same freedom on the questions that we desire to propound of Mrs. Walker on cross examination.

The Chairman: You have made that observation a number of times and it can stand throughout the examination along this line.

Mr. Johnson: I don't want to be repetitions, but since this was the first question after your ruling I thought it well to have it in. I don't want to be in the position of the one who made the objection. I welcome a full investigation, the Company does; but in view of the restrictions laid down for us we feel that Mr. Edises, under the same application of the same ruling, should be precluded from this inquiry.

The Chairman: Read the question.

Mr. Edises: May we proceed now?

The Chairman: Read the question, please.

(Pending question read.)

A. That's right.

By Mr. Edises:

Q. What were those instructions?

[fol. 315] A. Well, to make their standard investigation plus checking any possible Communist activity.

Q. You asked this agency or investigator, whatever it was, to check into—

A. Any possible Communist activity.

Q. Communist activity. That is, in addition to what you have referred to as a "standard investigation": is that right?

A. That's right.

Q. Now, I take it from your answer that you must have

had some intimation of possible Communist activities which led you to add that instruction to your "standard" instruction; is that correct?

A. Mr. Beckley and Mr. Cutter in asking me to have the investigation made issued those instructions.

Q. The Chairman: When was this, now? Date.

The Witness: Sometime in May of '47.

The Chairman: May of '47?

The Witness: That's right.

By Mr. Edises:

Q. And where were these instructions given you by Mr. Beckley and Mr. Cutter?

A. Oh, I would presume in Mr. Beckley's office. That's a presumption entirely, because I can't remember that detail.

Q. Were you called into their office?

A. I say I can't remember that detail. I am merely presuming that most of my instructions are issued by them in Mr. Beckley's office, but I—

Q. Can you recall the occasion—

[fol. 316] A. No.

Q. —that brought you into their office?

A. No.

Q. Well, tell us as closely as you can recall just exactly what was said on that subject.

A. I have already indicated that I was asked to make the standard investigation plus checking into any possible Communist activity.

Q. All right. Then was anything further said on that subject?

A. Not to my knowledge.

Q. Well, about that time did you have any other discussions with any of the management over the subject of possible Communist activities of Mrs. Walker?

A. I don't recall. At that time my duties were more, let us say, limited and I didn't get much into any discussions of that sort.

Q. Then what did you do about that instruction?

A. I passed it onto the retail credit agency.

Mr. Edises: Well, that may go out.

The Chairman: You don't have to state where you got the information.

The Witness: All right.

By Mr. Edises:

Q. At any rate, what instruction did you give them?

A. As already indicated.

Q. That hasn't been answered. I would like to know [fol. 317] what you told this investigating agency.

A. I told them to make their standard investigation plus checking into Communist activity.

Q. Well, you must have told them something a little more specific than that, didn't you?

A. No, no.

Q. Did anyone other than you speak to this investigating agency about this matter?

A. To my knowledge, no.

Q. Well, didn't they ask you any question about that request?

A. No. Their point of view, as was indicated to me where I previously worked and had dealings with that agency, was that the only thing that they kept away from when on any investigation was labor-union questions. Anything else they would be glad to make investigations.

Q. Then you merely told them to check into her Communist activities, and they asked you no question of any kind; is that your testimony?

A. That to the best of my knowledge is what happened.

Q. All right. Did you then inform either Mr. Cutter or Mr. Beckley that you had transmitted this request to the agency?

A. I don't recall whether I did or not.

Q. Well, what is your best recollection? Is it likely that you did?

A. Oh, I would assume that I probably didn't. I just—

Q. That you what?

[fol. 318] A. That I probably didn't; that I went ahead and did what I was asked to do and didn't report back.

Q. All right. Then what was your next contact with this agency?

A. When the reports came in.

Q. Oh. A report came in?

A. That's right.

Q. In what form was the report?

A. Typewritten pages.

Q. Did you have any oral communications with this agency on the matter?

A. I don't believe I did, other than the initial instruction.

Q. What did you do with the report after it was received?

A. I looked it over and made some notations on it, sent it in to Mr. Beekley.

Q. And did you then have any contact with Mr. Beekley on the subject?

A. I can't remember whether I did or not.

Q. Well, did there come a time, either shortly thereafter or within a reasonable time afterwards, that you had some discussion about this matter with either Mr. Beckley or Mr. Cutter?

A. I can't remember that I had. My function in this thing was merely to get the report and pass it on to them.

Q. I take it that it is your practice or your Company's practice when you have conferences on matters of this kind to keep notes on your conversations or discussions; isn't that true?

[fol. 319] A. I would say on 90 percent of them, No, because we just don't—

Q. Do you keep personnel files on your employees?

A. Yes.

Q. What type of matter goes into those files?

A. Oh, let's see. There are records of absence, records of pay change, and their original application and any employment information which is received; test results; any notations that may be made with relation to their work, their rating sheets; anything with relation to their health situation.

Q. And all matters pertaining to their desirability as employees?

A. Yes.

Q. Was this report placed in Mrs. Walker's regular employment file?

A. I don't think so.

Q. Well, what was done with it?

A. I turned it over to Mr. Beckley.

Q. Did you ever see it again?

A. I saw it this morning.

Mr. Edises: Oh, you saw it this morning.

I would like to ask that the report be produced, Mr. Chairman.

The Chairman: Do you have any objection to producing it?

Mr. Johnson: There is a certain statement I want to make very briefly.

Mr. Chairman and members of the Board. I have here [fol. 320] a document about which counsel has been asking. Before I do anything with it I want to make it clear that, as must be obvious, as soon as I produce it information which your order has excluded will come into the record and cannot be stricken because the document, as is customary, reveals on the letterhead who made the investigation.

The Chairman: You can take the letterhead off it if you wish.

Mr. Johnson: I don't want to. If the document is coming in I want it all. I am subject to your ruling, but that is my position.

Secondly, there is another point that I want to make, and it is this:

I assume that all of you gentlemen are familiar with these credit investigations and you know that they are entered into, as is stated on the face of this document, under contract. The contract that the client makes is that the document is strictly confidential and is not to be disclosed to anyone.

The statement, which you will note, says:

"Caution to Customers: In accordance with our agreement this report is released with understanding that information in this report is strictly confidential, not to be communicated to person reported" (and the per-

son reported is present in the room) "or to anyone else."

I fully realize that this is a quasi-judicial proceeding and that under the laws of the State of California you, Mr. Chairman, and the Board, have the power to issue sub-[fol. 321] poenas for the appearance of witnesses and for the production of documents.

I am stating to you frankly that I have the document here. I have read the qualification in full so that you can take such action as you may care to take.

I would assume that, by having it here and refusing to present it, you would assert your right to issue subpoena and order it brought in. I have no desire to go through that long-winded and needless procedure. And should you make a statement that that would be your action, if I refuse to produce it, then I am going to be practical and not put anyone to a lot of extra effort. But I do not want to be in the position and the Company does not want to be in the position of appearing to present the document without an order, contrary to their agreement.

I do not want to make a big hulabaloo about this, because whatever information is on here is available. If it is going in we want it all in.

Have I made myself clear?

The Chairman: Yes.

Arbitrator St. Sure: One more anomaly.

The Chairman: Well, we declined to make an order as far as Mrs. Walker was concerned. My disposition is not to make any order about it. Mr. Edises has requested the document. If you want to comply with his request, go ahead and comply with it. If you don't, we will have to draw such inferences as we can from the record before us when it is finally closed, just as we are going to have to do it in the case of Mrs. Walker's testimony.

[fol. 322] Arbitrator St. Sure: The difficulty here is not on the ground of unwillingness to reveal but because of an obligation which might lay the Company open for civil liability or other liability for having breached its agreement. Again we have a paradox. In order to overcome what would be a

technical, legal objection counsel has stated his position. He has not refused to produce but has stated that only under the circumstances of an order does he feel that he can waive the privileged character that this document enjoys.

Mr. Johnson: That is right. I want to make it very clear, that we have typewritten copies here; we have the whole thing written up. We knew this was coming. We are prepared to go ahead with it. This isn't anything that we are trying to hide, good and bad—and there are both in this document.

Arbitrator St. Sure: There can be no inference to be made in the absence of an order. The Company only wants to avoid civil liability because of breach of contract. I think that that is a perfectly sound position to take.

Mr. Johnson: It goes further than that, Mr. Chairman and members of the panel. This Company in the operation of its business regularly deals with this service. It is a valuable and inexpensive service. We use it day in and day out. We do not want to be put in the position where that service is cut off to us because we went into a hearing, violated our contract and got into a big wrangle with them about work done under contract.

May I ask this question: If you eventually determine [fol. 323] that you are going to use what we think is your legal power to order the complaining witness here, Mrs. Walker, to answer the questions propounded to her, I would assume that you would then feel under no restrictions and that you would order us to produce this document.

Mr. Edises: May I be heard on this subject?

The Chairman: Yes.

Mr. Edises: I think perhaps there ought to be something said from this side of the table.

Mr. Chairman, I want to dissent from the statement of Mr. St. Sure. He has put into the record the fact that no adverse inference is to be drawn against the Company because of the basis stated by counsel for his refusal to introduce the document.

In the first place, that is a self-serving statement. In the second place, if you are going to avoid drawing unfavorable inferences because he is afraid of being sued

for breach of contract, then I submit in all decency you can give the same courtesy to Mrs. Walker and assume that she has a principal position on which she bases her refusal to answer too. It may be difficult for people to understand that a person can feel that there is a moral position involved in a refusal to answer the "\$64 question," "Are you a Communist?" But I assure you that it is true and there have been plenty of persons who are not Communists who have felt that it is immoral to answer that question and thereby put themselves into the position of saying that they are in a privileged category. Communists have no civil rights; they are going to say that they [fol. 324] are not a Communist and thereby get a privileged position for themselves.

I simply want to protest against the assumption that a commercial objection such as counsel asserts has any priority or any superiority to a principal objection such as Mrs. Walker asserts.

Mr. Johnson: Of course we take the position that in deciding not to wilfully breach our contract we are not relying entirely on law but on our moral obligation to keep our word. We do not require laws for matters of that kind. Without laws we feel there is a moral obligation.

I want to expedite the hearing as far as I can, Mr. Chairman. These reports are here, and I don't want any monkeyshines about our avoiding a full disclosure.

Have you determined finally what your attitude is on my suggestion?

The Chairman: Yes. We are not going to issue any instruction.

Mr. Johnson: Well, may I suggest this. I make this statement: If I withhold the document now, I am going to ask in our direct presentation our people to use any written memoranda that they have available to them for the purpose of refreshing their recollection in detail as to what they knew about Mrs. Walker and her activity on June 6 1947, on May 29 1947, and on June 3 1947. And I want to assure you now and have it in the record that when I ask them to refresh their recollection from memo- [fol. 325] randa that they had available to them at the

time, these reports are going to come very definitely into the picture.

Having made that statement, I am going to take this position: that I am reluctantly compelled, because of the position that Mr. Edises has previously taken and the ruling which has been made, in spite of my own desire to have this thing handled in the way that I intimated, which would protect us and at the same time get the full document before the Board, to take the position that we will not present it at this time. I do that with the assurance that when we make our affirmative showing these documents will come before you in another way.

Mr. Edises: We request the issuance of a subpoena for the document.

The Chairman: You prepare a subpoena and hand it to us.

Mr. Edises: I will prepare it right now, because I need it in my cross examination.

Mr. Johnson: I helped you, Mr. Edises. So your subpoena may be specific, I gave you the dates. If you want them again, so that they may be specific, they are: June 6 1947; May 29 1947; and June 3 1947.

The Chairman: You don't have to make that out now. Have you anything else that you could go forward with?

Mr. Edises: No, Mr. Chairman. I want to ask the witness questions about it.

Arbitrator St. Sure: I think that we ought to settle this. If the subpoena is going to be issued and if the subpoena [fol. 326] is not to be executed, that is one thing, and then this Board begins to look a little silly. If the subpoena is to be issued and to be executed, then I am certainly going to reverse my position in connection with the instruction to Mrs. Walker.

Mr. Edises: It strikes me a little bit like Alice in Wonderland. He states that he is going to use the document to refresh recollection when he reaches his own examination. In other words, he is going to disclose the document. At the same time he wants us to believe that he is hampered by considerations of possible breach of contract and therefore does not want to make it public. It doesn't make sense to me.

The Chairman: Have you got your subpoena ready there?

Mr. Edises: I presume that just as the clerk does, you issue these in the name of the Superior Court, which would be the enforcing agency.

The Chairman: I don't know. I have signed them before.

Mr. Edises: I think that that is contemplated. Because after all, that would be the enforcement agency if there were any problem.

The Chairman: All right. Now you request that we execute and issue this subpoena forthwith?

Mr. Edises: Yes.

The Chairman: All right. The request is denied.

This will be Board Exhibit No. 4.

(Subpoena duces tecum, prepared by Mr. Edises, for production of reports of Retail Credit Company under dates [fol. 327] of June 6 1947, May 29 1947 and June 3 1947, was received in evidence and marked Board Exhibit No. 4.)

Mr. Edises: Now, is there any objection to the form?

The Chairman: No, not as far as we are concerned.

Mr. Edises: If there is, I would like to clear that up so that the issue can be presented clearly.

Mr. Johnson: I haven't seen it but I think that it is apparent that my whole attitude here is not one of form.

The Chairman: If there is any defect in the form,—

Mr. Johnson: I will stipulate that it can be corrected.

The Chairman: —it can be corrected.

Mr. Johnson: I don't want to even bother to read it now.

By Mr. Edises:

Q. All right. Now, Mr. Wagner, after this report was received, what action if any was taken concerning it?

A. I say my part in it was to hand it to Mr. Beckley.

Q. When did the Company first suspect that Mrs. Walker was a Communist?

Mr. Johnson: That is objected to as calling for the opinion and conclusion of the witness. It has not been established that he is an officer of the Company.

The Chairman: Well, he is personnel manager.

You can answer the question as far as you know.

A. As I tried to indicate, at this particular time I hadn't been there too long and my knowledge of this was very limited. All I was doing was acting under the instructions [fol. 328] of Fred and Art to get the information.

By Mr. Edises:

Q. Well, Mr. Cutter and Mr. Beckley told you that they thought that she was a Communist, didn't they?

A. They said: "Get this type of a report". Now, that is quite some period ago, and to the best of my recollection that is all the instructions I got.

Q. Well, isn't it a fact, Mr. Wagner, that it was generally assumed in management circles that Mrs. Walker was a Communist at about that time?

Mr. Johnson: That is objected to as calling for the opinion and conclusion of this witness as to something that is purely speculative.

The Chairman: "Generally assumed"? I think that is pretty broad. You had better reframe the question. What do you mean by "management circles", for example?

By Mr. Edises:

Q. Isn't it a fact that at or about the time that you got this report Mr. Beckley or Mr. Cutter stated to you as personnel manager that they believed Mrs. Walker was a Communist?

A. At that time I wasn't personnel manager. I was simply—My duties were rather restricted and I was carrying out instructions to get this information. That was my part in the picture.

Q. What is your answer to the question?

The Chairman: Read the question, please.

(Question read.)

A. No.

[fol. 329] By Mr. Edises:

Q. Now, are you familiar with the personnel records pertaining to Mrs. Walker?

A. A number of them.

Q. Are there any other memoranda or documents in those records dealing with this Communist issue as it pertains to Mrs. Walker?

Mr. Johnson: We object, of course, on the same grounds previously registered, Mr. Chairman. I think probably my continuing objection keeps that alive, but so there won't be any doubt.

Mr. Edises: We will stipulate that you may have a continuing objection.

The Chairman: Overruled.

A. What time are you talking about now?

By Mr. Edises:

Q. Any time during her employ.

A. That is, up until the time she was terminated?

Q. Yes.

A. Well, there was other information. I don't recall exactly what, but there was other information which the attorneys have provided us. Specifically, I don't remember.

Q. Have you got the personnel file of Mrs. Walker here?

A. I believe it's here.

Q. Will you go through it and mark or identify in some way any material in there dealing with Mrs. Walker's alleged Communist activities or affiliations?

Mr. Johnson: Who has them?

A. (Producing personnel folder.)

[fol. 330] By Mr. Edises:

Q. Now you have a folder in your hand that is between a half and three-quarters of an inch thick. What is that?

A. This is her personnel folder.

Q. Is that the only personnel folder pertaining to Mrs. Walker?

A. This is the one that we keep in our file. It is a regular personnel folder.

Q. Did you go through that before you took the witness stand?

A. Well, I have looked at this folder before.

Q. Have you looked at it recently?

A. I looked at it at the time of the Unemployment Compensation hearing.

Q. Have you ever been given any instructions to remove any documents from the folder?

A. No.

Q. No?

A. No.

Q. Is it your—

A. Except by you.

Q. I beg your pardon?

A. Except by you, to remove some for photostating for the hearing.

Q. Are there any documents pertaining to Mrs. Walker which are not in that file, to your knowledge,—

Mr. Johnson: Now; wait a minute.

By Mr. Edises:

Q. —pertaining to her employment history?

[fol. 331] A. There is the Retail Credit report.

Q. Anything other than that?

A. Well, I imagine our attorneys have some.

Q. Now, all of this material that you hold in your hand in that file pertains to Mrs. Walker's personnel and work record; is that correct?

A. That's right.

Q. There is no material that doesn't bear on that point?

A. It all relates to Mrs. Walker in one way or another.

Q. Her employment history at Cutter Laboratories; is that right?

A. Yes, I would say so.

Mr. Edises: May I see it?

Mr. Johnson: Surely. It is the same file that you had at the Department of Employment, Mr. Edises.

(Whereupon Mr. Edises examined personnel folder.)

The Chairman: Is this going to take long? Can you look at it during a recess?

Mr. Edises: Yes, I could.

Mr. Johnson: May we have it. We will make it available to you at the recess.

Do you want to use the documents that you have already picked out?

Mr. Edises: I did want to use these two.

Mr. Johnson: You go ahead.

Mr. Edises: Not now.

By Mr. Edises:

Q. Well now, after this report came in, I suppose that [fol. 332] from time to time thereafter there was discussion of this question between Mr. Beckley or Mr. Cutter and yourself?

A. There might have been between Mr. Beckley and Mr. Cutter but there was no discussion with me.

Q. Mr. Wagner, there has been introduced in evidence a copy of an issue of the "Labor Herald." Do you know what that newspaper is?

A. Yes, sir.

Mr. Edises: I believe the issue in question was August—

Mr. Johnson: 23, 1949.

Mr. Edises: —23, 1949.

The Chairman: What exhibit is that?

Mr. Burke: Company's 4.

By Mr. Edises:

Q. Do you know the one to which I am referring?

A. (Nodding affirmatively).

Mr. Johnson: Will you speak up, Mr. Wagner, so the Reporter gets your answer.

A. (Continuing) I do.

By Mr. Edises:

Q. Did you see that issue when it came out?

A. Yes.

Q. How did you happen to see it?

A. One of my functions is to read certain labor newspapers. I read the AFL East Bay "Journal" and I read

the "Labor Herald," to which we have had subscriptions.

Q. Has that always been one of your functions?

A. No. Since the last couple of years, I think.

[fol. 333] Q. Well, when did it begin?

A. I would be hard pressed to say exactly what time.

Q. Well, were you doing it in 1948 and 1949, for example?

A. I don't recall exactly when I did start.

Q. Well, before—

A. I want to explain again that I have had a number of duties, many of them, a multiplicity of them; and when I started any particular one, stopped and took up another, or what the variety was, I can't in my own mind very well tell.

Q. Who was it who flagged this particular issue?

A. I did.

Q. You did?

A. (Nodding affirmatively).

Q. Before you were engaged in reading these labor papers, was somebody else at the plant?

A. No.

Q. Then—

Mr. Johnson: Wait a minute. Do you mean on that day or prior to the time that he started the regular habit?

By Mr. Edises:

Q. Yes, before you started.

A. I don't think so.

Q. How long have you subscribed to the "Labor Herald"?

A. Probably about two years. I think the deal I made with Bill was that we would send him the "Microscope," which was our company paper, and he would send us the "Labor Herald."

Mr. Johnson: "Bill" is Mr. Burke, the business agent?

[fol. 334] The Witness: Mr. Burke, the business agent.

By Mr. Edises:

Q. What is your best recollection of when that took place?

A. It must have been some time after Bill came.

Mr. Edises: Do you remember when?

Mr. Burke: Yes. When we were concluding the contract in 1948, which was sometime in June and July 1948.

By Mr. Edises:

Q. Is that about right?

A. I don't recall the exact time.

Mr. Burke: I remember. I asked you, "Why can't I get the 'Microscope'?" And you said "What can you give me in return for it?" And I said: "I will tell you: the 'Labor Herald.'"

By Mr. Edises:

Q. Well, leaving the date out, was it under some such circumstance?

A. Definitely.

Q. I see.

A. We were bargaining.

Q. From then on you started to read the "Labor Herald"; is that right?

A. Somewhere around in there.

Q. All right. Did you then forward it to anybody else in the plant?

A. No. It went right into our file.

Q. Well, did Mr. Beckley ever read the "Labor Herald" to your recollection?

A. No, no.

[fol. 335] Q. Are you quite sure of that? Or is that just your impression?

A. I'm quite sure. Because my function when we finally decided—I finally suggested, "Why don't I read these papers, and then if there is anything interesting in them I will pass them on to you." I was accumulating a great variety of things from labor papers, not only this paper.

Q. What type of material did you earmark in it?

A. I would mark anything that I would think would be interesting to them. For instance, if there was a contract settlement that might be of particular interest, I would mark that in it and send it in to him.

Q. Did you maintain a clip sheet on it?

A. No. Just put them in our file.

Q. I suppose naturally you paid attention to anything that pertained to Cutter Laboratories in the "Labor Herald"?

A. Anything that came on that discussed us.

Q. And is that how you happened to flag the August 23 1949 issue?

A. That's right.

Q. Well, what did you do with it?

A. I put a big red circle around it and put a little note on it. I don't know. Something to the effect that "You might be interested in this," and put it on his desk.

Q. On whose desk?

A. Mr. Beckley's desk.

Q. Was that your practice when you found some interesting item in the "Labor Herald"?

A. That's right. Any interesting labor item any place.

Q. Then did you have a conversation with Mr. Beckley or any of the other officers of the plant regarding this matter?

A. Oh, —

The Chairman: You mean the newspaper article?

Mr. Edises: Yes. Regarding the newspaper article.

A. (Continuing) I don't recall anything specific. Right then and there he called me in and said "Did you see this?" I said: "Yes. I put it on your desk," or something like that. And I think he said: "What do you think of it?" "Well," I said, "new and strange things." Something of that sort. That was my comment. That was all that was said at that time, I believe.

By Mr. Edises:

Q. Well, what was the next development with respect to this article?

A. I think that he told me that he and Fred had decided to talk to the attorneys about it.

Q. Were those the only conversations in which you participated on this subject?

The Chairman: Is that the subject of the newspaper article?

Mr. Edises: Of the newspaper article

A. I think so. I think that that was about all.

By Mr. Edises:

Q. Now, isn't it a fact that Mr. Beckley told you "This is what we've been looking for?"

A. No, it is not a fact.

Q. And your testimony is that this was something "new [fol. 337] and strange"; is that right?

A. (Nodding affirmatively).

Q. It was quite a shock to you to have some indication that Doris Walker was a Communist?

A. It was the first time that I knew that she had worked for a cannery.

Q. I am not talking about that.

A. Well, that was the "shock" to me.

Q. Oh, I see. You weren't shocked by the intimation that she might be a Communist?

A. No, I'd say that I wasn't.

Q. Oh, you were shocked by that too; is that right?

A. Oh, no. I wasn't shocked by that. No, I wasn't shocked by that.

Q. Well, it wasn't a surprise to you at all, was it?

A. No, I think not.

Q. As a matter of fact you were of the opinion that she probably was, weren't you, Mr. Wagner, at that time?

A. I'd say that from some conversations with her in grievance hearings and things like that, that I was somewhat of that feeling.

Q. Well, as a matter of fact you had that feeling practically from the time that the matter was first raised with you by Mr. Beckley and by Mr. Cutter; isn't that right?

A. No.

Q. Well, you didn't believe that they would go off half-cocked and just create something out of their own mouths, did you?

[fol. 338] Mr. Johnson: The form of the question is objected to as being argumentative—purely argumentative.

The Chairman: Overruled. Overruled.

A. I want again to state that at that particular time my job was to carry out certain instructions of theirs, and when they came to me and said "Do this," I did it and that was all there was to it.

Arbitrator Heide: Is it 1949 you are talking about?

The Witness: No. I am talking about 1947.

By Mr. Edises:

Q. '47. That was the first time.

A. That's right.

Q. Now, it is a fact, is it not, that this request for the investigation of Mrs. Walker came shortly after her election as shop chairman?

Mr. Johnson: This is the first one?

Mr. Edises: The first request, yes.

The Chairman: What date are you talking about now?

Mr. Edises: The 1947 investigation.

Mr. Johnson: May 1947 is the date that has been identified.

A. Yes. Because I believe it was said that she was elected in April. That was the testimony yesterday.

The Chairman: That is correct.

By Mr. Edises:

Q. Yes. You have a complete file of the "Labor Herald," do you, in your office?

A. Well, complete from the time we started getting it, whenever that is. Copies may be thrown out, because we [fol. 339] have limited space and I usually tell the girl to heave stuff out.

Q. I would like to know when you first subscribed. We could get that from the "Labor Herald," but could you call your office and ask them the date of the first "Labor Herald" issue that you received?

A. (Nodding affirmatively.)

Q. Now I show you Company Exhibit No. 6 for identification. When was the first time that you saw that?

Mr. Johnson: At this point, Mr. Chairman, since Mr. Edises is now going to a new subject as to which we made a special objection yesterday and a different ruling was handed down, may I point out that Mrs. Walker under her cross examination refused even to identify her signature

and I was precluded from getting an answer by the ruling.

The Chairman: Yes.

Mr. Johnson: Now Mr. Edises is apparently setting out on a fishing expedition to find out where we got it and with whom we talked about it.

The Chairman: He hasn't got there yet. He hasn't got there yet.

Mr. Johnson: At the very first suggestion of such a thing I want to state the objection: that as far as examination of this witness concerning the document of 7/10/46, signed "Doris Brin," —

The Chairman: It is Company Exhibit 6 for identification.

Mr. Johnson: —and which has been marked Company Exhibit 6 for identification, I will interpose the objection, [fol. 340] or I will state this position: that we have no objection to a full and unresfricted examination within legal bounds concerning this document, but having been foreclosed by an order from going into that ourselves we take the position that Mr. Edises should now have the same rule imposed against him, namely, that examination of this or any other witness concerning this document is precluded by your ruling.

The Chairman: Just a minute.

What is the question?

(Question read.)

The Chairman: Overruled.

A. Early this week.

By Mr. Edises:

Q. Early this week?

A. Yes.

Mr. Edises: May I have the document.

By Mr. Edises:

Q. What were the circumstances under which you first saw it?

Mr. Johnson: That is objected to under your previous ruling.

The Chairman: Sustained.

I don't see that you can develop much from this witness if he never saw it until this week anyhow.

Mr. Edises: Am I to be——

The Chairman: What is your purpose?

Mr. Edises: Well, I don't, as counsel for the complaining party here, necessarily accept his answer that he only saw it last week. I am not bound, it seems to me, to accept the [fol. 341] first answer that a witness gives on a "hot" issue. It may turn out that while he didn't see it, he knows that someone else did.

Mr. Chairman: Go ahead. Ask another question.

By Mr. Edises:

Q: Your testimony is that you didn't see this until this week, in other words, long after Mrs. Walker's discharge; is that right?

A. I didn't see it until this week.

Mr. Edises: I don't know how I am going to lead into this since I am barred from asking him how he saw it and where he got it from. Apparently that is the crux of your ruling, Mr. Chairman.

The Chairman: That's correct.

Mr. Johnson: That is the problem that confronted me yesterday, Mr. Edises.

By Mr. Edises:

Q. From whom did you obtain this document?

Mr. Johnson: Now, that is certainly objected to as coming within your previous ruling.

The Chairman: Sustained, under our previous rulings.

Mr. Edises: Well, Mr. Chairman, suppose that the testimony should develop that this document was in the possession of the Company not just last week but, say, a year ago. Would that be relevant?

The Chairman: Well, we aren't there yet.

Mr. Edises: But isn't——

The Chairman: I mean, you are talking hypothetically.

Mr. Edises: Yes, I realize that.

The Chairman: You have a witness on the stand. Go

[fol. 342] ahead and ask him any questions you want, and we will rule on them. I don't want to speculate about what is going to happen when some other witness gets on the stand. We will just fan the air here if we do that.

By Mr. Edises:

Q. Had you heard about this document before last week?

Mr. Johnson: The same objection.

The Chairman: Overruled.

A. I had heard that a document such as that was in existence.

By Mr. Edises:

Q. When did you hear that?

A. Oh, I think it was a day or two before Mrs. Walker's discharge.

Q. A day or two before Mrs. Walker's discharge?

A. Yes.

Q. And you had heard it was in existence where?

A. I wasn't told.

Mr. Johnson: That is objected to. He is now trying to get at the source of the information.

The Chairman: No, not the source. He is asking—
Read the question, please.

(Question read.)

The Chairman: Overruled.

A. (Continuing) I wasn't told.

Mr. Edises:

Q. Who told you it was in existence?

Mr. Johnson: That is objected to. That plainly comes under the ground of your previous ruling. He is trying [fol. 343] to now proceed—

The Chairman: No, I don't think it does.
Overruled.

A. Mr. Johnson.

By Mr. Edises:

Q. Mr. Johnson.

A. He didn't tell "me." Let's make that clear. I overheard a conversation.

Q. Oh, you overheard him telling someone else; is that it?

A. Yes.

Q. Whom was he telling?

A. Fred Entter.

Q. To your knowledge was Mrs. Walker ever informed that such a document was in existence?

Mr. Johnson: That is objected to as being incompetent, irrelevant and immaterial.

The Chairman: Sustained.

Mr. Johnson: I will say this, so that the record is clear—

Mr. Edises: The objection has been sustained.

Mr. Johnson: —if she had gone into it yesterday, I would not—

The Chairman: Let's not keep ringing in changes on that. We know what your position is.

By Mr. Edises:

Q. Was Mrs. Walker ever asked if this was her signature?

A. I don't know.

Q. You were personnel manager, weren't you?

[fol. 344] A. I never saw the thing until early this week.

Mr. Johnson: Would you read the question before that?

The Reporter: "Question. Was Mrs. Walker ever asked if this was her signature?"

Mr. Johnson: And what was the answer?

The Reporter: "Answer. I don't know."

The Chairman: Are you about to pass to something else? Because it is just about 12:00 o'clock.

Mr. Edises: I may be about to "pass" (period).

This will be brief, I think.

By Mr. Edises:

Q. Mr. Wagner, you testified——

May we have this gentleman identified?

The Chairman: Mr. Hoskins, the United States Conciliation Service.

Does anybody have any objection?

Arbitrator St. Sure: He is having lunch with me. He has no interest in this case. I asked him to meet me here.

Mr. Johnson: We have no objection.

Mr. Edises: We are very agreeable to have him.

By Mr. Edises:

Q. You testified that you came to the opinion that she was a Communist or probably was a Communist because of certain things that occurred in connection with the presentation of grievances. Would you mind stating just——

A. I didn't say "in connection with the presentation". I said "during grievance discussions".

Q. Oh, I am sorry. I misunderstood. Now then, I would [fol. 345] like you to expand on that. Just what were the things that led you to form this opinion?

A. Oh, from time to time we would discuss current political situations, and she always seemed to follow the Party line pretty much. If the United States Army——

Q. You don't mean the Democratic Party or the Republican Party?

A. No. I mean the Communist Party.

Mr. Johnson: And may we have a capital "P" on the "Party" the first time.

A. (continuing) Well, if the current Party line seemed to be that they were opposing American intervention in Greece, that would be her particular point of view. It just seemed to me that in those conversations she followed that point of view very closely.

By Mr. Edises:

Q. And did she ever deviate from what you have referred to as the "Party line"?

A. Not to my knowledge.

Q. And this was true all the way through; is that correct?

A. Well, this didn't come up. I don't know when it came up, which specific meetings or what the time was. But as time went on, my impression became more strong.

Q. I see. But it was an impression that you got pretty much from the outset, I take it?

A. I didn't say that. I said that my impression became stronger as time went on.

Q. That is just the point. It strengthened as time went [fol. 346] on, but you had this impression, I take it, from the first time that you began to have dealings with Mrs. Walker, did you not?

A. Well, I personally didn't.

Q. What?

A. I say, I personally didn't. I wasn't directly concerned.

Q. Oh, you personally didn't have that opinion?

A. No. My opinion was rather no opinion, because I wasn't personally concerned.

Q. Well, had the subject been hashed about in conferences with representatives of management?

Mr. Johnson: When, Mr. Edises?

By Mr. Edises:

Q. Let us say in '47. In other words, about the time that you had this investigation made and afterwards.

A. Not to my knowledge.

Q. Not to your knowledge. And you were still acting in a sort of non-policy position; is that correct?

A. That is definitely correct.

Q. How about 1948?

A. I would say, Not then either.

Q. Not to your knowledge?

A. That's right. My knowledge, as I say, would not be too extensive on what Art and Fred would talk about.

Q. Well, about when did you become fairly convinced? How long did it take you to become fairly convinced that she was a Communist?

A. Oh, my own personal opinion in the matter was, I [fol. 347] suppose— Well, it is one of those things that builds up. When I began to feel fairly strongly that she was, I wouldn't know.

Q. Could you give us a rough idea?

A. I can't pin any date on an accumulation of circumstances.

Q. Well, I will put it in six-months' categories. Within some six-month period?

A. I wouldn't care to pin it down that closely, because I don't know. I say it is a summation of impressions.

Q. Well, you have had that opinion for quite some time, haven't you?

A. Oh, for a number of months.

Mr. Edises: Well, that is sufficiently indefinite.

The Chairman: Are you going to pass to something else?

Mr. Edises: No.

By Mr. Edises:

Q. Did you regard the matter of observing and noting her political views and manifestations and activities as within the scope of your duties in the personnel department?

Mr. Johnson: That is objected to as being incompetent, irrelevant and immaterial.

Mr. Edises: It is largely preliminary.

The Chairman: What is the question?

Mr. Johnson: He said "political views".

The Chairman: Read the question.

Mr. Edises: Oh, I know the horse you are riding, Mr. Johnson.

(Question read.)

[fol. 348] The Chairman: Overruled.

A. No. That wasn't particularly of interest to me.

By Mr. Edises:

Q. No, that is not my question. My question is, If an employee is a Communist, let us say: is the noting of that fact, observing conduct which bears upon that fact, within

the scope of your office in the personnel department? Is it part of your duties to note that sort of thing?

Mr. Johnson: Just a moment. I object to the form of the question. If Mr. Edises means if this witness notes that someone is a member of the Communist Party, I will withdraw the objection; but if he is merely talking about somebody suspecting or suspicioning someone is going along with what he calls the "Party line", that is different.

Mr. Edises: Now, I don't approve particularly of the idea of Mr. Johnson putting words into the witness's mouth, which is what he is doing. I think the question is pretty clear to the witness. I saw certain tentative movements of his lips, indicating that he was about to answer.

The Chairman: How much longer are you going to take with this witness?

Mr. Edises: I think not over five minutes.

The Chairman: Well, let's take a recess, then. I was going to indicate that we will only take an hour today, but I am going to take a little more time myself. Will 1:20 be all right?

Mr. Edises: Mr. Chairman, I wonder if I could be permitted to finish this particular line of examination. I [fols. 349-354] would like to have the witness answer these questions before the witness has a chance to talk to his capable counsel about the answers.

The Chairman: Read the question.

(Question read.)

The Chairman: The objection is overruled. Answer the question.

A. I would say, Yes; to keep aware of such a situation.

By Mr. Edises:

Q. And that is part of your duties; is that right?

A. Yes.

Mr. Edises: You had better speak up. He (indicating the Reporter) can't hear that.

A. (continuing) Yes.

[fol. 355] By Mr. Edises:

Q. Mr. Wagner, there has been reference to a report made by some investigating agency in the spring of 1947 concerning Mrs. Walker's alleged Communist activities. What did you learn from that report about those activities?

Mr. Johnson: Just a minute. So that the record is clear, [fol. 356] I submit that at this juncture the report is the best evidence of that and that it is available by proper legal process.

Mr. Edises: I will accept that stipulation and all the implications therefrom.

The Chairman: As far as I am concerned he can state to the best of his recollection what he knows, without reference to the report. I don't know that it is necessary for him to refresh his recollection from the report.

Mr. Edises: Well, Mister—

The Chairman: I mean he has a state of mind. That is all the question has asked him for here.

Mr. Edises: All right. I will stand on that.

The Chairman: If there is an objection, I will overrule it.

Mr. Edises: I believe you may answer now, Mr. Wagner.

A. Let me see. I will have to try to remember. I believe there was information that Doris had attended law school; that she had her degree;—

Q. What degree?

A. L.L.B.

Q. Is that a law degree?

A. Law degree. Whatever the proper initials are. That she worked for or was associated with or had contact with the firm of Gladstein, Sawyer— I get all mixed up on the variety of names involved.

Q. Well, it changed several times.

A. And Edises.

[fol. 357] Q. It ended with Edises for so long that I got tired of its ending, so I started my own firm so I could be No. 1. You know, first on the list.

At that time was in Gladstein, Grossman, Sawyer & Edises?

A. Well, I wouldn't recall because there has been such a variation on that thing.

Q. Well, do you keep track of the various changes and composition of these various law firms?

A. No.

The Chairman: Well, apparently everybody knows what he is talking about. Suppose you go ahead.

By Mr. Edises:

Q. What else did you learn?

A. I believe there was reference to the fact that she also worked for the OPA.

Q. What else?

A. There was something about she was organizer for the CIO.

Q. And what else?

A. I would say that my recollection is that her neighbors didn't like her.

Q. Neighbors didn't like her. Anything else?

A. Elaboration along those lines, but I can't think of anything specific.

Q. Was there any reference to Communism in the report?

A. I think the word was mentioned several times.

Q. In what connection?

A. I can't quite recall but something about characterizing [fol. 358] certain of her activities as being Communistic in nature—these reports of neighbors.

Q. The report characterized certain of her activities as Communist activities?

A. Communistic in nature.

Q. Now, anything else in the report that you can recall?

A. No. I think in general that's—There were details like—Excuse me.

The Chairman: This was May of 1947?

The Witness: This was the report made in May 1947.

There were details like how old she was and she was married and that sort of thing.

By Mr. Edises:

Q. Now, was that report discussed by you with any of your superiors, or was it discussed by them in your presence?

A. That report was handed by me to Mr. Beckley.

Q. To Mr. Beckley. And did you hear any comment or characterization of the report by Mr. Beckley or anyone else?

A. I didn't.

The Chairman: What was your answer?

The Witness: I said "I didn't."

By Mr. Edises:

Q. Did you feel that the report confirmed the feeling that she was a Communist?

Mr. Johnson: That is objected to as calling for the opinion and conclusion of this witness.

The Chairman: All right. I think he is entitled to voice [fol. 359] one.

Overruled.

The Witness: May I have the question again.

(Question read.)

Mr. Edises: Put it another—

A. I wasn't aware that there was a "feeling." Remember that through this whole thing I was given instructions to do a specific job.

By Mr. Edises:

Q. I see.

A. The report came in and I gave it to Mr. Beckley. That was my participation in the matter. I had no feelings—This is not a speech. This is an explanation.

Q. I understand. All right. Now, Mr. Wagner, were you present at the meeting of October 5 that has been testified about in this proceeding?

A. I was.

The Chairman: October 5 when?

Mr. Edises: 1949. The day before Mrs. Walker's discharge.

By Mr. Edises:

Q. Do you recall what went on at the meeting?

A. The subject—

Q. Just answer the question.

A. I recall—

The Chairman: Read the question.

(Question read.)

A. (Continuing) —some things.

By Mr. Edises:

Q. Now, specifically do you recall any reference to a radio [fol. 360] broadcast by Sidney Roger on that wage dispute?

A. I have forgotten whether it was specific but I think some mention was made.

Q. By whom?

A. By Fred. Fred Cutter.

Q. Fred Cutter. Do you remember his words?

A. Not too well. My function there was in connection with the grievance and I was ruffling through some papers at the time he was making his—having his discussion. But I would say that as far as I could recollect he was saying something to the effect that, looking at Bill, "Were you responsible for this?"

The Chairman: Meaning Mr. Burke?

The Witness: Mr. Burke.

By Mr. Edises:

Q. And what were you doing at the time? You said that you were looking at some papers.

The Chairman: He said "ruffling" papers.

A. I was ruffling some papers. I was interested in this from the point of view of the grievance.

My Mr. Edises:

Q. Were you looking through the papers while you were ruffling them?

A. Undoubtedly.

Q. Then how do you know that he looked at Bill?

A. I say that I was ruffling papers as things went on.

Q. And you heard some words that were uttered?

A. That is correct.

Q. Did you hear them more than once?

[fol. 361] A. Not to my knowledge.

Q. Do you remember a statement to the effect that "It is a dirty bird that fouls its own nest"?

A. I believe so. Something like that.

Q. Who said that?

A. I think Fred did.

Q. Were you able to observe Mr. Cutter's manner in making these remarks?

A. Oh, I would say the tone of his voice was bristly.

Q. "Bristly"?

A. Uh-huh (affirmative).

Q. Have you got any other synonyms for that expression?

A. Well, you might use a common one.

Q. "Angry"?

A. Angry somewhat.

Q. Now, Mr. Wagner, I asked you before the recess to find out when your subscription to the "Labor Herald" began. Were you able to find that out?

A. Yes. Apparently the files show that we have some copies starting in '46 and an incomplete file in '47, and the girl said a fairly—what looked like a complete file of '48 and '49, up to the present time.

The Chairman: When did Mr. Burke say that he made this cooperative bargain?

The Witness: I think it was in June of '48.

Mr. Edises: I think he said June '48.

[fols. 362-367] Arbitrator St. Sure: June of '48.

Mr. Edises: Let's get it on the record.

Was it June of '48?

Mr. Burke: June.

Mr. Edises: I have here certain papers that I extracted from the personnel folder. I hand you a carbon copy of a letter dated October 4, 1949.

It will be stipulated that this is a correct copy of the letter that was sent by the Company?

Mr. Johnson: Yes, that is correct.

Mr. Edises: I would like to read this into the record. It is very short, and it will save encumbering the record.

This was two days before the discharge:

“October 4, 1949.

“Mr. William Burke,
Business Agent, Local 225, UOPWA-CIO,
160 Grand Avenue,
Oakland 12, California.

“Dear Mr. Burke:

“This will advise you that we have received your letter of September 23 concerning the absence of Doris Walker from work October 10 to 14, inclusive, to attend the State CIO Executive Board meeting and convention.

“This absence has been noted and approved.

“Very truly yours, Cutter Laboratories, (S.)

“A. K. Beckley, Vice President.”

[fol. 368] FRED A. CUTTER, called as an adverse witness on behalf of the Union, having been first duly sworn by the Reporter-Notary, was examined and testified as follows:

Direct examination.

By Mr. Edises:

Q. What is your full name, please?

A. Fred A. Cutter.

Q. And your position, Mr. Cutter?

A. My title is Vice-President and Secretary. For the past year and a half I have been Acting Executive Vice-President. I have a rather odd position in general inasmuch as I am one of three brothers who head the firm and

we can't all be president, so we more or less divide up the responsibilities.

Q. You don't want to divide it up like Gaul: into three parts?

A. Not into three parts.

Q. How long have you occupied that or a similar position?

A. Oh, for ten or fifteen years.

Q. Would you say that in substance you are one of the chief executives of the plant?

A. Yes. As far as labor matters are concerned I am the chief executive.

[fol. 369] Q. Would you explain the lines of authority in relation to these labor matters? I heard Mr. Beckley's name mentioned as having some responsibility in labor relations matters.

A. Mr. Beckley has the line responsibility for industrial relations. I have the top management responsibility for industrial relations as differentiating from the line responsibility.

Q. Is that an abbreviated expression for "firing line"?

A. Not exactly. When I speak of the top management responsibilities, the policies, the top management policies, in regard to all salary, wage, other matters concerning up to and including the vice-presidents of the organization, I am the final determining officer.

Q. Do you maintain fairly close contact with the day-to-day activities or week-to-week activities as far as labor relations are concerned?

A. It depends, Mr. Edises, on the problems at hand. Routine, day-to-day activities or week-to-week or month-to-month activities, no; but where there is a question of major policy, yes.

Q. How about this Walker affair?

A. Unquestionably.

Q. Did you keep in close touch with that?

A. Unquestionably.

Q. From the beginning?

A. From the beginning.

Q. When was your attention first called to this possibility of Communist affiliation?

[fol. 370] A. I have forgotten whether it is 1938 or 1937 when the FAECT was trying to get into the atomic plant and also into our laboratory.

Q. No, no. I am afraid I inadvertently misled you as to what my question was. What I meant was with respect to Mrs. Walker.

A. Approximately the time that the investigation was made in the spring, I think it was, of '47.

Q. To refresh your recollection, she was hired, I think, on October 10, 1946. She became president of the Union, according to the record, or I should say shop chairman, in April of 1947. With those dates in mind, can you tell us a little more closely when you first began to regard her as a Communist?

A. Well, if you mean regarding her a Communist, regarding her as a probable fellow traveler engaged in some Communist activity, it would be in the spring of 1947.

Q. The spring of 1947. There has been testimony that the Company ordered an investigation of her Communistic activities. Can you state what preceded that investigation? What were the factors that led you to order it?

A. I personally had had some direct comments from employees, and I don't remember whether that was firsthand or secondhand now, that Mrs. Walker had left some Communist literature in the dressing room; and I know that Mr. Beckley discussed information that he had in that regard.

Q. Was the leaving of this Communist literature in the dressing room the sole reason that led you to decide to [fol. 371] have her investigated?

A. I don't know whether that was the "sole reason." I believe that she had some conversations which were reported as well. I think, Mr. Edises, I should give you some background as far as our interests were concerned there.

Q. Well, I would prefer at this point, Mr. Cutter, that we just confine your answers to the questions. Your counsel will undoubtedly bring out any matters that he feels are pertinent beyond that.

Can you recall how long before the investigation you had these feelings about her possible Communist activities or affiliations?

A. No, I can't.

Q. Do you recall whether it was before she terminated her probationary period or afterwards?

A. I think it was after she terminated her probationary period.

Q. Well, it probably was after?

A. Yes.

Q. Because, as a matter of fact, if it had been before, you could have terminated her with or without cause under the contract.

A. That's right.

Q. Isn't that true?

A. That's right. And had we had good reason to believe that she was engaged in Communist activities during the probationary period, she would have been fired.

Q. If you had known these matters that came to your [fol. 372] attention about the time of the investigation before she became a regular employee, I suppose you would have had her fired at that time?

A. That's right. Just as we would not have hired her had we known of her past record.

Q. In other words, if you had known at the time she was hired or prior to her completing her probationary period what you learned shortly afterwards, you wouldn't have hired her or you would have gotten rid of her; is that correct?

A. Yes. Because we could fire her without cause or we could have failed to hire her without cause.

Q. I see. But after she had completed her probationary period, there are certain provisions of the contract which in effect give a somewhat more permanent status to an employee; isn't that correct?

A. That's right.

Q. I see.

A. That is true of the present contract and that is true of the contract that we were operating under at that time.

Mr. Edises: Yes.

The Chairman: Has this "just cause" clause been in the contract all through the period?

The Witness: Yes.

The Chairman: In 1946 and before?

The Witness: Yes.

Mr. Johnson: Apparently Mrs. Walker and Mr. Stanton and I seem to agree that this clause under which they are [fol. 373] operating did go in in 1948.

The Chairman: What was there in there before that?

Mrs. Walker: It was implied but not explicit.

The Witness: May I explain myself. We have always felt that we were in the position, in the case of an employee who has passed the probationary period, that we could not fire the employee without cause.

Arbitrator St. Sure: Did the prior contracts contain the "probationary period" clause?

The Witness: Yes, sir.

Arbitrator St. Sure: Was it explained in the contract what was meant by "probation" and beyond "probation"?

The Witness: Paul, I don't remember exactly what the exact provisions were.

The Chairman: Will someone produce the earlier contracts for the record? I don't mean right now.

Arbitrator St. Sure: May we have '46, '47 and the current contract.

The Chairman: Let's start with the contract that was in effect at the time the lady was hired.

Arbitrator St. Sure: Yes. October '46.

By Mr. Edises:

Q. Now, prior to this investigator's report in 1947, did you have any information that she had falsified her employment application?

A. Not to my knowledge.

Q. When did that first come out?

[fol. 374] A. Mr. Edises, you are asking me for exact details—

Q. No, no.

A. —there that I am not competent to—

Q. No, no, Mr. Cutter; I am not. I just want your best recollection in whatever form you can give it to me.

A. Well, I think I have stated that, Mr. Edises: that to the best of my recollection, in the spring of '47 was our first intimation that she was engaged in Communist activities.

Q. And you were present when Mr. Wagner testified about the information that was gathered by this investigating agency?

A. Yes.

Q. That of course came to your attention?

A. That's right.

Q. And was it discussed with anyone else?

A. Yes. Mr. Beckley and I discussed it.

Q. You found out at that time that she had—Well, when Mr. Beckley was questioned about it he said that "The Company discovered some of the places she worked with, some of the law firms she worked for. I found out her education was more than she put on paper". Do you agree with that?

Mr. Johnson: Just a minute. I submit that even with this transcript and record, and even though Mr. Beckley had been here today and testified, that is not the proper way to ask the question.

Mr. Edises: I don't know. I think even technically—

The Chairman: Do you challenge the accuracy of what [fol. 375] he is quoting from the record?

Mr. Johnson: No. I challenge the form in which he asks this question of the witness.

Mr. Edises: All right. I will withdraw it to save argument. I will withdraw it.

By Mr. Edises:

Q. Give me to the best of your recollection what you learned from that report.

A. My best recollection of what we learned from that report was that she had not included in her work application the fact that she was a graduate of the University of California law school, that she was a member of The State Bar, that she had had experience with the OPA. Now, whether we knew at that time whether she had practiced as an attorney with the OPA, I don't remember. I am trying to separate the specific things we learned from the, if the ladies weren't present, chatter.

Q. They are hardened. They can take it. You can speak freely.

A. All right. Let's skip it.

Q. How about the law firm?

A. I believe that the "XYZ law firm"—I don't remember whether it mentioned that she had been employed with them, but there was some association there.

The Chairman: When you say "XYZ", can you remember—

The Witness: Oh, Margolis, and I always remember Mr. Edises in that connection, but—And then there is this chap that was back in this Communist trial in New York. I have forgotten—

By Mr. Edises:

Q. Gladstein?

[fol. 376] A. Gladstein.

Q. Grossman—

A. You don't—

Q. Sawyer—

A. You tell me and I will say "Yes".

Mr. Edises: I am always mystified why Margolis came into this. We threw him out quite awhile ago!

The Witness: Apparently he didn't stay "threwed out" in other people's memory.

The Chairman: Next question.

The Witness: Well, I had not completed. I am sorry.

The Chairman: All right. Go ahead.

A. (Continuing.) There may have been other specific stuff. Let me see. In the non-objective part of the report there were reports of discussions with her neighbors, of meetings which they labeled Communistic meetings at her residence, and also the fact that she subscribed to Communist papers. For some years I subscribed to "Political Affairs", and believe me! I am not a Communist.

By Mr. Edises:

Q. It is hard reading, though, isn't it?

A. Yes, very.

There were quite a few derogatory remarks about her

which I didn't think were confirmed or played any part in this.

Q. You mean on other matters? On other issues?

A. On other matters, yes.

Q. Now, did the report state any opinion or conclusion [fol. 377] on this question?

A. Yes. The report stated that the subject was engaged in Communistic activities and was not recommended for hiring. Inasmuch as she was already on the payroll, that was not exactly germane.

Q. With that report in your possession did you take any further steps toward investigating those matters?

A. Yes. We called in our attorneys.

Q. No. I am speaking about that time.

A. Yes. I am saying that at or about that time we called in Mr. Johnson. We were seriously concerned with the implications in that report and we asked him, If we discharged Mrs. Walker, could we make it stand up? We did not, on advice of counsel, discharge Mrs. Walker because we had no material evidence beyond certain things which she had left off of her application blank and which would be, we feared, explained away. We didn't want to be in the position of harassing a union officer and not be able to make the discharge stick.

Q. Now, did you discuss the matter of asking her about these discrepancies and these investigative findings?

A. If we discussed that matter it would only be with exasperation, because she had already demonstrated that she had no concern with the truth; and I think that in general we expected the same type of a run-around that we got in the hearing on her unemployment compensation application—the run-around from herself and her attorney that this was just girlish enthusiasm.

[fol. 378] Q. Did you take any steps toward trying to obtain any documentary evidence, such as the evidence that turned up later which is Company Exhibit No. 6 for identification?

A. No. It didn't occur to us that such evidence might be available. We were aware at that time of the difficulty of putting any evidence that you can sink your teeth in as far

as subversive activity, membership in the Communist organizations.

Q. Well, I don't want to misstate your testimony, but do I understand the substance of it to be that you felt that if you asked her out and out "Are you a Communist?", she would lie to you about it?

A. That is a part of what you can take from my testimony. Further than that, she or the Union brought a charge of—

Q. Unfair labor practice?

A. —unfair labor practices before the NLRB. And with no probability of our being able to get further material, we would just be feeding more material to the Party to claim that we were persecuting her.

Q. Well now, isn't it a fact, Mr. Cutter, that the NLRB charge was concerned only with alleged interference and restraint of union activities and not Communist or so-called subversive activities?

A. Well, I think that you have always used that as a cloak to hide your activities, Mr. Edises.

Mr. Edises: Since this country is still relatively free, I suppose you have a right to make that statement, although [fol. 379] it is more or less irrelevant to the record.

The Chairman: Next question.

Mr. Edises: May that go out?

The Chairman: Next question. I will grant the motion.

Mr. Edises: Now could I have the question again?

(Question read.)

A. (Continuing:) Well, I'm not immediately familiar with the documents at hand, but I will take it for granted that that would be the form in which it would have been put.

By Mr. Edises:

Q. As a matter of fact, isn't it a fact that it is not an unfair labor practice to fire a person for being a Communist?

Mr. Johnson: Well, —

Mr. Edises: I withdraw it. It is a question of law, I grant it.

By Mr. Edises:

Q. At any rate, for whatever reason, Mr. Cutter, as I understand it you decided not to press the investigation any further at that time; is that correct?

A. That is correct.

Q. Although you did believe that you had plenty of ground for further investigation if you had thought that it would be fruitful; is that right?

A. No, I wouldn't say that we had "plenty of ground". As far as we were concerned, we were impressed with the probability that she was a fellow traveler. We had nothing on which to base any charges beyond that, nor nothing on [fol. 380] which to hope to find anything on which to base further charges beyond that.

Q. Well, isn't it a fact, Mr. Cutter, that it was open to you in 1947 to take the same measures which you took in 1949 which produced this alleged documentary evidence?

A. Well, it may have been open to us, Mr. Edises. Maybe we were stupid, but—

Mr. Edises: If your counsel wishes a stipulation on that point, we may be able to enter into it.

The Chairman: Frame a question.

Mr. Johnson: I would rather not get into an argument.

By Mr. Edises:

Q. But at any rate, as far as your activities are concerned, did you let it rest at that point?

A. We did let it rest at that point.

Q. What was your own state of mind, Mr. Cutter? Did you think that she was a Communist?

The Chairman: When?

Mr. Edises: In 1947.

A. I make a very fine distinction in my mind, perhaps wrong, between thinking a person is a Communist and thinking a person is a dupe of the Communists. I have talked to many people whom I felt have followed the Party line from stupidity rather than disloyalty.

By Mr. Edises:

Q. Well, do I understand that to mean that you decided that Mrs. Walker was stupid?

A. No. But until we had evidence or until I had much better evidence to go on than we had there, and we had no [fol. 381] probability of such evidence being available, I had no grounds on which to state that Mrs. Walker was a Communist.

Q. Well, I am not asking you at this point about the validity of your grounds. There might be some debate about that. I am asking you to state on the record, and you are under oath, whether at that time in your own mind you didn't believe that she was a Communist.

A. No, I don't believe I did. I believed that she was a fellow traveler and might be a Communist.

Q. You believed that she might be?

A. Yes.

Q. Then you would disagree with Mr. Beckley, who testified at the prior hearing that he at that time believed she was a Communist?

Mr. Johnson: Just a minute, Mr. Cutter.

I submit, Mr. Chairman;

The Chairman: That is argumentative, isn't it?

Mr. Edises: No, it isn't really. I want to find out whether there was any—

The Chairman: He stated what his belief is. And where do you get that Beckley statement? Is that out of the transcript? Is it in the exhibit?

Mr. Edises: Yes, that is in the transcript.

The Chairman: All right. There it is.

Mr. Johnson: It is one sentence out of the transcript. There are a number of others.

[fol. 382] Mr. Edises: There are a number of others, too. There is one—

Mr. Johnson: I object to this, Mr. Chairman. He is just compounding—

The Chairman: It doesn't seem to me to be a fruitful line of questioning. If Beckley's statements are at variance with his, they will stand that way in the record. I don't

see much use in asking him if he agrees or not. If he says something contrary to what Beckley says, obviously they didn't agree.

By Mr. Edises:

Q. When did you learn that there was no such character as John Tripp?

A. We learned that during the investigation that we made subsequent to the publishing of the article in the "Labor Herald", late in August of 1949.

Q. How was that "Labor Herald" article brought to your attention?

A. I think it simply came over in the mails, marked "To read". But it may have been that Art phoned me about it. I'm not exactly—I'm not sure how it came.

The Chairman: Who is "Art"?

The Witness: Beckley. I am sorry.

The Chairman: Art Beckley.

By Mr. Edises:

Q. Are you in the habit of reading the "Labor Herald"?

A. As a matter of fact I subscribed to the "Labor Herald" and it came to my desk for some years, along with a [fol.383] large number of other publications. Sometimes I glanced through it quite thoroughly, read articles which were of interest to me; sometimes, if I didn't have the time, I would wastebasket it; other times I would mark it and pass it on.

Q. Beckley also, I understand, read the "Labor Herald"?

A. No. As a matter of fact you can't accuse Art of being a reader. If he can possibly avoid it, he doesn't read anything.

Q. Who first caught this reference to Mrs. Walker?

A. Of my own knowledge I don't know. I heard John say that he did; and if he said that, why,—

Mr. Johnson: John is Mr. Wagner.

A. (continuing) —it would be true. I have never heard him lie, to my knowledge.

By Mr. Edises:

Q. Now, you testified that you learned from this investigating agency report that she had been in law school. Is that correct?

A. That's right.

Q. And I presume it said when she had been in law school, I guess they checked into that, didn't they?

A. I don't remember exactly. I would be willing to grant that it did say that, but I am not sure.

Q. And having that investigative report in your possession, did you then check up on her employment application?

A. Yes, I think that we did.

Q. And I presume you noticed that it stated there that she was employed in 1939 by John Tripp, attorney, as a file clerk?

{fol. 384} A. I presume so, but I don't remember what the exact details are. I haven't a convenient memory like some of your witnesses.

Q. Your memory is not so bad, though, Mr. Cutter. And it is a fact, is it not, that according to this investigative report she was in law school in 1939?

A. That's right. Wait a minute. I presume that is right. It probably is.

Q. What inference did you draw from the fact that Mrs. Walker had worked for the law firm of Gladstein, Grossman, Sawyer & Edises?

A. As I remember, Mr. Edises, I don't think that the information we had stated that she had worked for them. I am trying to remember the word. But at any rate the inference we would draw from association with your firm is that she was tied up with Communist activities.

Q. In other words, that she had a "pipeline to Moscow"; is that it?

A. If you want to make that conclusion.

Q. In other words, you would infer that anybody who worked for my law firm would be a Communist; is that right?

A. No, Mr. Edises. I imagine you have clerical workers.

Q. Well, any lawyer, let's say, who worked for them.

A. Well, I would assume that any lawyer that was asso-

ciated with you for any length of time would have decided leanings in that direction.

Q. Would get contaminated; is that it?
[fol. 385] A. That's right.

The Chairman: Well, let's get back.

By Mr. Edises:

Q. Some of it may rub off on people who associate with me, Mr. Cutter.

A. Well, we take those chances.

Q. Well, it is a risk you take.

Now, Mr. Cutter, coming to the meeting of October 5, 1949, which was the day before she was fired. We have had several versions of what went on there and what you said, but we haven't had it out of your own mouth. Will you relate what occurred on that day with reference to this Sidney Roger broadcast?

A. Yes. We had a meeting scheduled sometime the previous week for that day with Mr. Johnson and Mr. Stanton, to go over the information which they had in regard to their investigation of Mrs. Walker.

Mr. Edises: Just a moment, now, please.

I ask that that part of the answer go out as not responsive. I asked him about a meeting.

The Chairman: Granted. Granted.

What he is asking you about is what happened at the meeting.

The Witness: Well, it is necessary—

The Chairman: All he wants to know is what you said and what other people said at this meeting. That's all. As I understand the question, that is all that he is asking about.

Mr. Edises: Correct.

A. (continuing) To the best of my recollection, the memory of various witnesses that I was angered is correct.

The Chairman: Angered by the broadcast?

The Witness: Angered by the broadcast.

A. (continuing) I believe the witnesses who stated that I addressed my remarks to Mrs. Walker are mistaken. I be-

lieve, I ~~am~~ quite sure in fact, that I did in fact address my remarks to Mr. Burke.

And I would like to complete the quotation that you made of one of my remarks to show you why that is so.

By Mr. Edises:

Q. Just tell us what you said.

A. I said that "It is a dirty bird that fouls its own nest, and for that reason I don't believe that any of the employees of Cutter Laboratories had anything to do with this broadcast. Where did it emanate from?" And I was speaking to Bill Burke.

Q. If I were to tell you that Mr. Beckley, in describing what went on there; stated that you "first"—

Mr. Johnson: I object—

Mr. Edises: Now, just a moment. Just a moment, please. Let me finish the question before you object.

By Mr. Edises:

Q. —stated that you "directed that question to Mr. Burke and then (you) turned to Mrs. Walker, or vice versa", would you be prepared to state positively that that was not true?

Mr. Johnson: I object to the form of the question.

The Chairman: Let's leave this Beckley business.

Mr. Edises: In substance it is cross examination.

The Chairman: I know, but put the direct question to him. [fol. 387] Let's not weave the Beckley thing into it. As I told you a minute ago, if there are any discrepancies between his testimony and Beckley's, they are in the record there. All you have to do is to argue about it.

Mr. Edises: But I would like to give him a chance to perhaps refresh his recollection. His recollection on some matters is not so good. On others it is remarkably good.

The Chairman: I will sustain an objection to the question.

Mr. Johnson: Will the volunteer statement of counsel—

Mr. Edises: If he can state that my witnesses have convenient memories, I think I can say this mild thing about him.

Arbitrator St. Sure: I think the comments back and forth

simply add to the record. I think if we can avoid them, we would all be further ahead.

The Chairman: I think so too.

You can go ahead and test his recollection all you want to, but it seems to me that we will spin out here forever if you start dipping in and out of that transcript.

By Mr. Edises:

Q. At the time that Mrs. Walker went to work for you until the time that you fired her, did she perform her work in a satisfactory way?

A. As far as I know, the actual work which she performed was satisfactory.

Q. Did you ever try to put any limits on her access to this or that section of the plant?

A. Not to my knowledge.

[fol. 388] Q. Were your activities in October 1949 substantially the same as they were in October 1946, when you first hired her?

The Chairman: You say "your" or "her" activities?

Mr. Edises: The plant's activities.

The Chairman: Oh, the plant's activities.

Mr. Edises: The plant's operations.

A. That's right.

By Mr. Edises:

Q. Do you ever ask your employees when they are being hired whether they are Communists?

A. I don't know how long ago we put very definite questions into our employment record as to Communist activities, membership in Communist fronts.

Q. When?

A. I say I don't remember when that was. It was sometime back.

Q. Was it before or after you fired Mrs. Walker?

A. I believe it was before, but I am not sure. I think that Mr. Wagner can clear up that point, if you are interested.

Mr. Edises: Can you, Mr. Wagner?

Mr. Wagner: I believe it was before.

Mr. Edises: Well, are you certain or are you just speculating?

Mr. Wagner: I am not certain.

By Mr. Edises:

Q. As a matter of fact, didn't you put it in the blank about the time that you decided that you were going to fire Mrs. Walker?

A. No. If you want the background of why that appeared [fols. 389-395] in the blank—

Mr. Edises: I would like an answer to my question.

The Chairman: Read the question.

(Question read.)

The Chairman: Now, you can answer that "yes" or "no"; and if you want to explain, you may explain. Or "yes" or "no" or "I don't know".

The Witness: I just testified to the fact that I don't remember when we put it in our blank.

By Mr. Edises:

Q. Well, all right.

A. But I would like to tell the Chairman—

Mr. Edises: Well, I will object.

A. (continuing) —what brought about putting it in our blank.

The Chairman: That will be a volunteer answer.

By Mr. Edises:

Q. At any rate it wasn't your policy to ask such a question at the time that you hired Mrs. Walker, was it?

A. No.

Q. And you didn't have it in your employment application?

A. That's right.

[fol. 396] DORIS WALKER, recalled as a witness on behalf of the Union, having been previously sworn by the Reporter-Notary, was examined and testified as follows:

Direct examination.

By Mr. Edises:

Q. Mrs. Walker, you have testified that sometime in September of 1948 you were served with a subpoena calling for your attendance as a witness at the cannery hearings which involved among other things your discharge from the canneries. Do you recall that testimony?

A. Yes, I do.

Q. Now, where were you served with that subpoena?

A. I was served with two subpoenas: one was originally served upon me by Mr. Berke, the attorney for the Board, in connection with my direct testimony on my own case; and the second subpoena, which was obtained by the cannery companies, was served upon me at my job at Cutter Laboratories.

Q. In the plant; is that correct?

A. In the plant.

[fol. 397] Q. Now, Mrs. Walker, do you know the procedure which is followed and required at the plant when some outside person wishes to speak to one of the employees?

A. Yes, I do.

Q. What is that procedure?

A. The procedure—

[fol. 398] A. The procedure was for the person, unless he was a salesman, to check with the personnel office, stating his business and the person he wanted to see.

Mr. Edises: That's all.

Cross-examination.

By Mr. Johnson:

Q. Now, Mrs. Walker, do you have any knowledge as to [fol. 399] whether or not the person who served you did check with the personnel office?

A. No.

Q. You don't know whether or not he did?

A. No.

Mr. Johnson: I ask that the statement be stricken.

The Chairman: Denied:

By Mr. Johnson:

Q. Mrs. Walker, when was this subpoena served on you?

A. It was served upon me after I testified at the Board hearing. In other words, I believe the transcript that you had, Mr. Johnson, showed that I testified on September 28 and 30, or something of that kind; and it was within a week or two after this testimony.

Q. Now, do you have a copy of any of those documents that were served on you?

A. I believe I do.

Q. Can you get them and bring them here at the next hearing of this matter?

A. If I still have it I can.

Mr. Johnson: I would request that both subpoenas be produced; the one that she said that the attorney for the Board served on her; and the one that she says some other person served. And since I notice from this article that Mr. Edises was her attorney at that matter, I assume there will be no difficulty in getting it either from her or from him.

[fol. 400] Will you search your files, Mr. Edises, if she can't find it and produce it?

Mr. Edises: I would be delighted to cooperate in producing it. I doubt if my files will have it, but I will look.

By Mr. Johnson:

Q. You said, Mrs. Walker, that two subpoenas were served on you. When was the first one served?

A. Shortly before the time I testified. Perhaps a week before.

Q. And the subpoena that you referred to in answer to Mr. Edises' question as being the subpoena served by the attorney for the Board was the one that brought you down there to the hearing of September 30 of 1948; right?

A. The first subpoena brought me to the hearing at the time I testified, as shown by the transcript that you have, which, as I recall, was September 30.

Q. I show you here Company's Exhibit No. 5, the extracts from the transcript of the Berent-Richards Packing Company case; and I call your attention to the testimony here on page 10, which is, as indicated, excerpts from pages 1957 to 1961 of the transcript. Is that the testimony to which you were referring that you gave in answer to the subpoena served by Mr. Berke, the attorney for the Board?

A. Yes.

Q. Now I show you this transcript and ask you if on that occasion at that time you were asked this question and if you gave this answer:

[fol. 401] "Question (By Mr. Roos) Mrs. Walker, are you a member of the Communist Party?"

"Mr. Berke: That is objected to as being incompetent, irrelevant and immaterial and having no bearing on the issue in this case.

"Trial Examiner Greenberg: The objection is overruled.

"Answer. I don't think that my political affiliation is any of your business, Mr. Roos.

"Mr. Roos: Will you read the question?"

"(Question read.)

"Mr. Roos: I will ask that the Trial Examiner instruct the witness to answer the question.

"Trial Examiner Greenberg: I will direct the witness to answer the question.

"The Witness: Mr. Examiner, of course this question doesn't come as a complete surprise to me, as I have had time to think about it. It seems to me that the principle involved is of such importance that although I realize the effect that it may have on my case I will say that I refuse to answer the question because I think it violates the principles of the secret ballot in this country, my constitutional right and, to sum it up, I don't think it is of anybody's business but my own."

Were you asked that question on that occasion and did you give that answer?

Mr. Edises: To which I object on the ground that the transcript is in evidence, that there is no challenge to its authenticity; it has all been asked and answered.

The Chairman: It is all in. I will sustain the objection.
[fol. 402] By Mr. Johnson:

Q. I call your attention to Union Exhibit No. 10, the article of October 19, 1948 in the "Labor Herald", the one entitled "Never Mind About Doris". Did you read that article?

A. I read it today. I don't remember whether I read it at the time that it came out or not.

Q. Oh. So you don't have any knowledge of reading it in October 1948 either?

A. I have already said, Mr. Johnson, that I don't recall whether I read it at that time or not.

Q. You were a subscriber to the "Labor Herald" at that time, weren't you?

A. I think I testified the other day that I have never been a subscriber to the "Labor Herald". I received it, or I did receive it as a union officer.

Q. At any rate, whether you subscribed or whether you received it as a union officer, you were in regular receipt of this newspaper during the month of October 1948, weren't you?

A. I believe I was.

Q. And you were pretty active in the movement in connection with the Berent-Richards Packing case at that time, weren't you?

A. I don't understand the question.

[fol. 403] Q. Well, the article is some nineteen days after you said you testified, and you were active in connection with the hearings in the Berent-Richards case at that time?

A. Well, I testified.

Q. And these hearings went on for some time, didn't they?

A. Well, I don't know.

Mr. Edises: I will stipulate that they did. Also that they were a matter of very wide public knowledge in the community.

Do you accept that stipulation, Mr. Johnson?

Mr. Johnson: No.

That's all.

The Chairman: Do you have any questions?

Arbitrator St. Sure: I haven't.

The Chairman: Do you?

Arbitrator Heide: No.

Mr. Johnson: Just one minute. There is another point, Mrs. Walker.

Mr. Conklin, do you have your morning notes here?

The Reporter: Yes, Mr. Johnson.

By Mr. Johnson:

Q. I call your attention to Company Exhibit No. 6 for identification and ask you if anyone at Cutter Laboratories ever showed you this document.

Mr. Edises: Now, just a moment.

Well, go ahead. Ask it.

A. No.

[fol. 404] By Mr. Johnson:

Q. I call your attention to the fact that Company Exhibit 6 for identification is signed "Doris Brin", B-r-i-n, and ask you whether or not at any time anyone at Cutter Laboratories ever asked you if that is your signature.

Mr. Edises: You mean while she was employed there?

Mr. Johnson: At any time.

Mr. Edises: Well now, wait a minute. I will object to anything that bears on anything that happened after her employment.

Mr. Johnson: I think he is right. At any time——

Mr. Edises: And I would like to make clear also that we have not contended in this hearing that the question of what the Company knew and brought to her attention or the basis on which they acted was irrelevant. What we are claiming is that any matters pertaining to matters that were not brought to her attention or not utilized as a basis for her discharge are irrelevant.

The Chairman: All right. There is a question pending. Read it, please.

By Mr. Johnson:

Q. At any time from the time that you went to work at Cutter Laboratories on October 10 1946 down to the date when you were discharged on October 6 1949, did anyone ask you whether or not the signature "Doris Brin" on this letter of 7/10/46, marked as Company Exhibit 6 for identification, was your signature?

A. No.

Q. Is that your signature?

[fols. 405-411] Mr. Edises: Now, just a moment. That is objected to on all the previous grounds and on the ground that it has already been settled by this Board.

The Chairman: Sustained.

By Mr. Johnson:

Q. Did anyone at Cutter Laboratories during that period ever show you the original of this document or a copy of it and ask you if this three-page statement was written in your handwriting?

A. No.

Q. Is it your handwriting?

Mr. Edises: The same objection.

The Chairman: The same ruling.

By Mr. Johnson:

Q. Did anyone at Cutter Laboratories during the period referred to ever ask you if you were a member of the Cannery Workers Club of the Communist Party, as referred to in this document?

A. No one ever asked me any such question.

Mr. Johnson: That's all.

(Witness excused.)

The Chairman: Do you rest?

Mr. Edises: We rest.

[fol. 412] FRED A. CUTTER, called as a witness on behalf of the Company, having been previously duly sworn by the Reporter-Notary, was examined and testified as follows:

Direct examination.

By Mr. Johnson:

Q. Mr. Cutter, your full name? I think you have given that.

A. Fred A. Cutter.

Q. And where do you reside, Mr. Cutter?

A. 887 Paramount Road, Oakland.

Q. You stated under examination by Mr. Edises that you [fol. 413] are Vice-President of Cutter Laboratories.

A. Yes.

Q. And I think you said in answer to his question that as far as matters of industrial relations or hiring and firing are concerned, you are the top representative of management.

A. As far as policy is concerned.

Q. I think you said that on routine matters they were handled either under Mr. Beckley's direction or by someone working under him.

A. That's right. The line functions of industrial relations are handled by Mr. Beckley and, under him, by Mr. Wagner.

Q. Could I ask you whether or not after January 18, 1947, when the Union filed with the National Labor Relations Board a charge of unfair labor practices, the problems in connection with Doris Walker's status were routine from that date on?

A. I don't believe I understand your question.

Q. Well, did you personally participate in policy decisions or in the decisions with respect to Mrs. Walker's employment at the Laboratories from that date on?

A. Well, I did prior to that date. I mean, the subject was discussed as to her employment. There was no further discussion as to her employment until shortly before she was discharged.

Q. But you had personally been brought into the ques-

tion of decisions concerning her case prior to the date that I mentioned?

A. Yes.

Q. Now, Mr. Cutter, what is the nature of the business of [fol. 414] Cutter Laboratories?

A. Well, we are engaged in the production and sale of biologicals, such as your vaccines, antitoxins, various preparations for the prevention and treatment of diseases; we are engaged in the production of penicillin; we are the sole laboratory in the country engaged in the fractionation of human blood; we produce a line of dextrose and other solutions which are used for large-volume peritoneal injection.

Q. Large volume of what?

A. Peritoneal injection. It means injection whether it is hypodermic immediately under the skin or intramuscular or intraperitoneal or intravenous injection. It is actually food and water by vein. And in this same department we produce the various component flasks and solutions for the handling of human blood in blood banks. We also produce in connection with that department disposable intravenous injection outfits, including your intravenous injection outfits for blood and plasma, with the containing of filter and the various donor sets that are required for the civilian population and for the Red Cross.

Q. Mr. Cutter, are those various products to which you have referred produced by Cutter Laboratories for commercial sale and distribution?

A. Yes.

Q. And are they distributed and merchandised by Cutter Laboratories in its sales facilities throughout the United States?

A. Throughout the United States and certain foreign countries.

[fol. 415] I forgot to mention that those were the human products I was discussing. We also produce a line of veterinary biologicals, largely for the prevention of disease in livestock, cattle particularly.

Q. Are the products to which you have referred, referring now to the human products, available for civilian use?

A. Yes.

Q. And are they also made available to and used by the armed services?

A. Yes, with the exception of the products which are particularly for pediatric use—and even there, for children of military personnel; most if not all of the human products we produce are used by the armed forces and are used in your various Veterans' hospitals.

The Chairman: All of those questions are couched in the present. Has what you say as being now true been true for the past four years?

The Witness: Well, yes, Mr. Chairman. We are in a rather unique position, as far as the armed forces are concerned inasmuch as we are the only laboratory of our type with a complete line of biologicals; we are the only laboratory producing penicillin west of the Mississippi. When I said "the only laboratory", I meant west of the Mississippi. The Army constantly orders its West Coast supplies from us in a constant readiness for emergency. I say "the Army". The Army and the Navy and presumably the Air Force. However, that goes through a joint-purchasing group. So [fol. 416] that there is no difference in the present time than during the past four years, except the stepped-up volume of ordering and the emergency nature of the orders at present.

By Mr. Johnson:

Q. Now, Mr. Cutter, during the war years from 1941 down through 1945, was Cutter Laboratories subject to security control by the Federal authorities?

A. Yes. Very stringent security control.

Q. Tell us what you mean by that.

A. Well,—

Mr. Edises: Just a moment. I want to get an objection in.

That is objected to on the ground of irrelevance. It happened during the war years up to 1945. That is not the issue at the present time.

The Chairman: Overruled.

A. (Continuing:) The Fourth Area Security Command was more or less constantly in our hair with rules and regulations which we had to live up to in regard to the armed

guards at the plant; the patrolling of the plant; the checking of employees, old and applicants; fingerprinting of all employees and applicants before they were hired. As a matter of fact it was our understanding from them that, at least as far as this immediate area was concerned we were top in their priority among commercial companies as far as security requirements are concerned.

Mr. Edises: I will object to that and ask that it go out as a conclusion of the witness and self-serving.

The Chairman: Overruled.

[fol. 417] By Mr. Johnson:

Q. Mr. Cutter, you referred to the various products and processes of Cutter Laboratories. Are they subject to sabotage?

A. Yes.

Q. What do you mean by that?

A. Our products and processes are peculiarly subject to sabotage in that any individual with average intelligence and with very little coaching from any bacteriologist or from just self-education from ordinary texts, or from observation within the laboratory, could not only sabotage the production of many of our products for a period of many months—I speak of a period of many months. Our biologicals in particular are in production from a minimum of six months on up to eighteen months or longer. They are products which are peculiarly subject to sabotage and could be rendered very dangerous without our knowledge. We could ship—

Mr. Edises: Just a moment.

Mr. Chairman, I move to strike the testimony given in the last answer primarily on the ground that it is irrelevant to any of the issues in this case. It is based on certain assumptions which are completely unproven and unsubstantiated. The first of those assumptions is that the person involved here is a Communist. The second assumption is that Communists engage in sabotage. There is absolutely no proof of that at all. The third assumption is that if she were a Communist she would engage in sabotage. All these are assumptions. In a proceeding of this kind, which is based on evidence, there has got to be more than

[fol. 418] assumption. There has got to be something in the nature of proof. There has not been an iota of proof on that score. And I object very strenuously to any assumption by the Board, in matters as disputable and controversial as that, being made without any evidence.

The Chairman: Of course you are arguing your ultimate question again here.

I will overrule the objection.

You will have an opportunity to argue most of these objections that you are urging here at the conclusion of the case, when you come to argue the entire case. This is probably an unusual record. I am not sure that when we get all through, the record will support an award from the standpoint of whether one side or the other or both of you have had a fair hearing. So at the conclusion of the evidence you can make motions to strike on a lot of these vital objections that have been made on either side, and you will not have to keep preserving these objections on the way through.

We have talked about this in executive sessions here. What the Board proposes to do is to consider all these evidentiary objections that you are making, the rulings that we have made during the course of this hearing; and if we conclude that we have been in error and that there are infirmities in this record that would produce an award which would be open to attack, we may call for further hearing.

Of course, you go ahead and protect your record. It is [fol. 419] up to you. You may have your own way of doing this. But what I want to tell you now is that at the close of the evidence you can renew all these objections in the form of motions to strike, and we will entertain them and order them submitted at that time.

I will overrule your objection.

Mr. Johnson: Along the line of your statement, Mr. Chairman, may I point out very briefly, so that there will be no question about it, that our general purpose in asking these questions is in answer to your statements at page 91 and also page 168 of the record, where you stated:

"... the inquiry here is essentially into the motives of the Company, ..."

That is at page 91. And secondly, your statement:

"The main issue here is the state of mind, to my way of thinking, of this employer; . . ."

We think that this inquiry is germane to that. And you indicated at another point of the record the other day that we can prove these things only step by step. This is the first step, and we will link it in by subsequent evidence.

By Mr. Johnson:

Q. You were testifying, Mr. Cutter, about the fact that some of your processes, I think, took from six months to eighteen months to develop the products; is that right?

A. Yes.

You might take the 'tetanus antitoxin' as an instance. Your tetanus toxin, to prepare it and to toxoid it and get it ready for injecting into the animals, would be a minimum [fol. 420] of four to six months, forgetting the time that your animals are, you might say, laying fallow. You give an injection to your horses of toxoid and then you let them stand for a minimum of six months, preferably a year, before they are "hyperred"; that is, before they receive doses of toxin and/or toxoid to hyperimmunize them. Before they reach the peak of immunity, at the point that you start bleeding them will be a period of perhaps sixteen months from the first dose. But that is telescoped into your period of producing your toxoid. But you will have a minimum there of eighteen months if you are lucky and twenty-four months or longer if it runs its usual course.

Q. Now, Mr. Cutter, are the products, then, which are being produced in Cutter Laboratories, as you stated, subject to destruction or damage by unannounced and sudden stoppages of the equipment?

Mr. Edises: Now, just a moment. I will object to that as leading and suggestive.

The Chairman: Well, it is leading. But go ahead.

A. Yes they are, Mr. Johnson. But that, I might say, is the routine thing. The old emery dust and turning the wrong valves and that sort of thing are routine sabotage that you discover almost overnight.

Mr. Edises: Just a moment. I will object to that and ask that it go out. It is not responsive; it is not relevant.

The Chairman: It is responsive. He says, Yes, there are interruptions of that kind but they are not as important [fol. 421] as other kinds of interruption. He is explaining what kind of an interruption it is.

Overruled.

By Mr. Johnson:

Q. State what—

The Chairman: Don't lead.

Mr. Johnson: All right.

By Mr. Johnson:

Q. State what you had in mind with respect to sabotage.

A. I have in mind sabotage of test and test records; sabotage of actual material in a way that we would not be aware of it. I don't want to be more specific.

Q. And were those things that you had in mind and that you and the executives of the Company were giving actual consideration to in the months of September, October and November of '49?

Mr. Edises: That is objected to as leading.

The Chairman: Overruled.

A. Yes.

By Mr. Johnson:

Q. The statement that you made, then, is not something which has been current or discussed simply recently during the last few months?

A. No.

Mr. Edises: That is objected to as leading and suggestive.

The Chairman: Sustained.

A. (continuing) We have had a—

Mr. Edises: Just a minute.

The Chairman: Just a minute.

[fol. 422] Mr. Edises: There isn't any question pending.
The Witness: Sorry.

By Mr. Johnson:

Q. At what time, Mr. Cutter, were these things to which you have referred discussed at the Laboratories?

A. Mr. Johnson, the fear of potential sabotage has been with us constantly since an organization which was suspected of Communist domination tried to organize our plant back in the late '30's. At the same time they were attempting to organize the cyclotron work.

Mr. Edises: I ask that that all go out as not responsive.

The Chairman: Overruled.

By Mr. Johnson:

Q. To what organization do you refer?

A. First was the Federation of Architects, Engineers, Chemists and Technicians, and later that was taken over bodily by UOPWA.

Q. By the United Office and Professional Workers of America?

A. United Office and Professional Workers of America. Everything that we could read pointed to Communist domination of those two organizations.

Mr. Edises: I will ask that the latter part go out as not responsive, volunteered and as irrelevant.

The Chairman: Overruled.

By Mr. Johnson:

Q. Has the management at Cutter Labs. had a policy on the employment of Communists?

A. Yes.

Q. Since when?

A. Again going back to our first experience.

[fol. 423] The Chairman: You mean back in 1930 now?

The Witness: Back in 1937 or '38, whenever it was.

The Chairman: Did you say " '30" awhile ago or "1937"?

Arbitrator St. Sure: " '30's", I think he said.

A. No, I didn't blame Mrs. Walker. And I think the best evidence of that was a—

Mr. Edises: Just a moment. I object to that as argumentative. He is supposed to be testifying.

The Chairman: Sustained. Sustained.

By Mr. Johnson:

Q. Now, Mr. Cutter, after this grievance matter and the discussion incident to it had closed, you said there was a conference concerning Mrs. Walker.

A. That's right.

Q. Tell what happened.

A. You presented a great deal of material which you had found which seemed to prove without question that Mrs. Walker was in fact not simply a fellow traveler but a Communist, a party card holder, an officer in various clubs of the Communist Party, and showed us considerable supporting documents to that effect.

Q. Now calling your attention specifically to your testimony that on August 23, 1949 you had directed your attorneys to run down the question of Mrs. Walker's testimony before the National Labor Relations Board as re-[fol: 441] ferred to in that "Labor Herald" article which is Company Exhibit No. 4, did the attorneys at this meeting on October 5 have with them the transcript of the testimony at that NLRB hearing?

A. Yes. I remember that transcript in particular because of certain passages in it which you pointed out. You pointed out that she had—

Mr. Edises: Just a moment. I will object to that as not responsive. He has answered the question.

The Chairman: The question has been answered.

By Mr. Johnson:

Q. Did the attorneys at that time go over the transcript with you and point out certain portions of it?

A. They did.

Q. I call your attention to Company's Exhibit No. 5, in evidence here, which is the extract of the National Labor Relations Board transcript in the Bercut-Richards case,

The Witness: In the late '30's.

The Chairman: Oh.

A. (continuing) We have felt that Communists were a potential danger to our products, our production; and we would not knowingly hire a Communist.

By Mr. Johnson:

Q. Now, have you stated the policy in the employment of Communists which you said has been in effect at the Laboratories since 1938 or '9?

A. Have I stated it?

Q. Is that the policy?

A. Yes. That was our policy.

The Chairman: What do you mean by "stated" it?

Mr. Johnson: Said what the policy was. Testified here what the policy was.

The Chairman: Oh, I see. Oh, I see.

A. (continuing) The policy was to avoid hiring them and, if we felt that we had any at least fellow travelers in our employ, to keep our eye on them for future reference.

By Mr. Johnson:

Q. During the period of the War Labor Board service was there discussion of that issue?

A. Yes. It came up in regard to the portion of the contract dealing with discrimination, in which we readily [fol. 424] agreed not to discriminate against any employee by reason of race, color or religion. But we did not, as a matter of fact we opposed rather strenuously an inclusion of "political belief" in there because we felt that the intention was that "political belief" was a cover for any type of subversive activity. And we opposed the inclusion of "political belief" most strenuously, but had it shoved down our throat by the Chairman of the panel, a War Labor Board Panel, and later by the War Labor Board.

The Chairman: Who was that?

The Witness: Father—Not Father but Rabbi Reichert.

The Chairman: Are you talking now about Article X, Section 1: "Both parties agree that they will not discrim-

and I call your attention particularly to pages 10, 11 and 12 of that document, which pages set forth extracts from pages 1957 to 1961 of the record. Did the attorneys at that meeting go over with you and read to you portions of the transcript which appear on pages 1957, 1958, 1959 and 1960 relating to the question of Mrs. Walker's Communist Party membership?

A. They did.

Q. And if you will look at that document there which is Company Exhibit No. 5, do you recall that the selections set forth there were read at that meeting at length and discussed with you?

[fol. 442] A. I do. Because I remember the—

Mr. Edises: I will object to that. It has already been answered.

The Chairman: I think all you need to say in answer to that question is "I do". Why do you want to explain it?

By Mr. Johnson:

Q. Do you have something in mind?

Mr. Edises: I will object to that question.

A. If there are any questions—

Mr. Edises: Just a moment. There is an objection.

"Do you have something in mind?" is not a question.

The Chairman: I don't see that it needs any explanation. He says he read it and saw it.

By Mr. Johnson:

Q. Prior to that date, Mr. Cutter, had you known the facts set forth in that statement?

A. Except for the portion of it which appeared in the article in the "Labor Herald", no, where she stated that she refused to testify as to whether or not she was a Communist.

Q. Calling your attention again to Company Exhibit No. 5, I refer you to pages 1, 2, 3, 4, with respect to employment in various canneries, and ask you if you recall specifically those portions being read and reviewed at that meeting.

A. Very particularly, because of the question of one of

inate against a present or prospective employee or member because of race, color, national origin, religious belief, or Union affiliation?"

The Witness: That's right.

The Chairman: When did that clause first get into the contract?

Mr. Johnson: That is what he is coming to. The one you have there is the current Agreement,—

The Chairman: Yes, I understand that.

Mr. Johnson:—and he is indicating that the words "political belief" were stricken out at the first negotiation, which was in—

The Chairman: When did it go in?

The Witness: The first real negotiation that we had, true collective bargaining, was following the death of the [fol. 425] War Labor Board. Then we simply laid it on the line and said that "'political belief' isn't going in there".

By Mr. Johnson:

Q. Mr. Wyckoff's question was, When did it go in?

A. It went in—

The Chairman: As part of a War Labor Board Directive?

The Witness: As part of a War Labor Board Directive.

The Chairman: And stayed in until—

The Witness: Stayed in until the War Labor Board died, and it came out of the contract immediately thereafter because we wouldn't have it in.

By Mr. Johnson:

Q. Now, Mr. Cutter, you said that you personally became active or participated in decisions with respect to Doris Walker sometime in April or May of 1947.

A. That's right.

Q. Do you have in mind the occasion or the circumstances that first brought you into activity on her case?

A. Well, Mr. Beckley brought it to my attention that there had been reports, and, as I remember, I had some direct reports brought to me on that, that she had brought various literature, Communist literature, into the plant

and left it around the dressing rooms and engaged in some discussions along that line. And we decided to make an investigation. The investigation was made, but there was no conclusive, as a matter of fact there was no real evidence at all that she was in fact a Communist.

Q. When you say an investigation was made, you are [fol. 426] referring to some investigation by a reporting service?

A. That's right.

Q. That is the one that has been referred to here as the Retail Credit Association?

A. That's right.

Q. Did you personally authorize that investigation or direct it?

A. I didn't state who was to make it but did authorize that an investigation be made.

Q. And what did you direct or authorize should be investigated?

A. The Communist activities of Mrs. Walker.

Q. Did you give any instruction that any union activities by Mrs. Walker were to be investigated by that agency?

A. No. Naturally not. Mrs. Walker was a union member, active in the Union. We wouldn't need to investigate whether or not she was active in the Union. We knew that. We have been in a difficult position of trying to keep a nice dividing line between union activities, however, and Communist activities.

Q. Did you actually receive a written report eventually?

A. Yes.

Q. Is that the document that was referred to during your examination by Mr. Edises last week?

A. It is.

The Chairman: How much did it cost?

The Witness: Six or seven dollars, as I remember. It was their standard report plus the request that they pay particular attention to possible Communist activities.

[fol. 427] By Mr. Johnson:

Q. Mr. Cutter, as a result of the information that you got from that report or from any source available to you on

June 6 1947, did you know or have any knowledge of prior employment of Mrs. Walker in any of the canneries?

Mr. Edises: Now just a moment.

Do you intend to offer that report?

Mr. Johnson: No. I made my position clear on that, Mr. Edises.

Mr. Edises: Well, I am certainly going to object to any questions based on knowledge of the report unless we can see the report.

The Chairman: Overruled.

The Witness: Will you repeat the question.

The Chairman: Read it, please.

Mr. Edises: Just a moment, I would like to say one thing further.

I think that we are put in a position that is essentially unfair to us, Mr. Chairman, when the witness is allowed to say that this report on Communist activities didn't convince him or didn't give him enough information on which to base a discharge, but we are prevented from seeing the report for the purpose of cross-examining to determine whether the witness is telling the truth or not.

The Chairman: That may be. That may be. You will have an opportunity to argue that.

Overruled. Overruled.

[fol. 428] Mr. Johnson: Just so that your position is clear—

The Chairman: No. I think we understand what your position is. And the witness can answer the question.

Well, go ahead if you want to restate it.

Mr. Johnson: I don't want to haggle at all.

The Chairman: I mean, An evidentiary objection has been made, it is overruled, and the witness can answer the question.

Mr. Johnson: Yes. I can clear that up. I don't want to repeat anything. We have stated our position previously on this report, and it is indicated in the record on page—

The Chairman: And you will have an opportunity to state it again at the close of the evidence.

Mr. Johnson: I don't have the transcript here, but it has been previously stated. And I suggest that Mr. Edises is

the one who has brought this situation about and not what we have done.

By Mr. Johnson:

Q. But, Mr. Cutter, from any source—

The Chairman: Just a moment. Read the question, please, Mr. Conklin.

(Question read.)

A. No, we did not.

The Chairman: If you had asked another question we would have gotten another objection.

By Mr. Johnson:

Q. From any source available to you on June 6 1947, did you have any knowledge about the identity of an individual, if there were such, by the name of John Tripp?

A. We did not. Mr. Johnson, may I say this: You say [fol. 429] "available" to us. They might have been available if we had known where it was, but we had no knowledge.

Q. About Mr. Tripp?

A. About Mr. Tripp.

Q. From any source or any information that had come to your attention on June 6 1947, did you know of the activities of Dr. William Berke? B-e-r-k-e.

A. Well, we knew of one activity of his was answering a letter of inquiry in regard to Mrs. Walker in which he had given her a character reference as being a person of integrity, et cetera.

Q. Other than that, did you have any information on that date from any source about Dr. Berke's activities?

A. No.

Q. From any knowledge or information that had come to your attention on June 6 1947, did you know about any specific Communist Party membership of Doris Walker?

A. We did not.

Q. From any possible source that had come to your attention and knowledge on that date, did you have any

specific reference to any membership in any Communist Party club or section?

A. No, we did not have any specific knowledge or any specific reference to that. The only reference we had of any Communist activity was contained in the report referred to, in which it was stated that the neighbors had said that she had held meetings in her apartment and that they thought they were Communist or left-wing meetings.

[fol. 430] Q. But had you received at that time any knowledge, any information or any specific charge that Mrs. Walker had ever been a member of the Communist Party?

A. No.

Q. Or a member of any club or section of the Communist Party?

A. No.

Q. And had you received any such information at that time from any source that she was in fact an office holder in various sections of the Communist Party?

A. No, we had not. If we had had such information we would have taken action at that time.

Mr. Edises: I ask that that go out as volunteered and not responsive.

The Chairman: Overruled.

By Mr. Edises:

Q. Did you at that time have in your possession or have knowledge of any documents written or signed by Mrs. Walker relating to Communist Party activities on her part?

A. No, we had not.

Q. Did you at that time have in your possession or have knowledge of any written applications signed by Mrs. Walker in any of her proper names, whether Doris Walker, Doris Brin, Doris Brin Marasse, or otherwise signed by her, at the time she went to work for these canneries?

A. No. We didn't have knowledge of her ever having applied for work let alone having any written data.

Q. In 1947, Mr. Cutter, after this report was received, [fol. 431] did you call Doris Walker in for any questioning?

A. No, we did not. Mrs. Walker had already proven

herself a liar. We could see no point in questioning her. And we took it for granted, had we done so, that she would make more charges of hammering at her for union activities.

Mr. Edises: Now, I ask that that go out as volunteered, non-responsive, as scurrilous and as self-serving.

The Chairman: Well, he says, No, we did not call her in.

Mr. Edises: And then he doesn't explain his answer——

The Chairman: Oh yes.

Mr. Edises: Because no explanation is necessary.

The Chairman: Oh yes. He says, No, and then he explains why he didn't do it.

Overruled.

By Mr. Johnson:

Q. Mr. Cutter, on June 6 1947 or at any time prior to August 23 of 1949 did you read or have knowledge of the October 19 1948 article in the "Labor Herald" which has been introduced in evidence here, being Union Exhibit No. 10?

A. No. I had not read this, nor had I knowledge of it. If we had, our second investigation would have started at that time.

Mr. Edises: I will ask that the latter part go out as non-responsive.

The Chairman: Overruled.

Mr. Edises: Self-serving.

By Mr. Johnson:

Q. When did you first see that document, Mr. Cutter?
[fol. 432] A. When it was presented in evidence here last week.

Q. You made a reference during your examination by Mr. Edises to some change in the application for employment form at Cutter Laboratories with respect to Communist Party membership. Do you recall that?

A. I don't remember whether I made it. I know that there was some reference made to that change in the application.

Q. What are the circumstances on that, Mr. Cutter?

A. The circumstances on that— You have—

Mr. Edises: Just a moment. He has just stated that he doesn't have the information on which to base an answer.

Arbitrator St. Sure: He said that he didn't give the first reference. I think Mr. Wagner did, as a matter of fact, Mr. Chairman. But it was discussed.

The Witness: I said I didn't know whether I made the reference; but a reference was made to it.

The Chairman: Is there a question pending?

Mr. Johnson: Yes. The question was, State the circumstances on that.

A. (continuing) I attempted to state them the other day to the best of my memory—and my memory was good. The circumstances were that I had attended a meeting in Seattle, a western regional labor relations meeting of the United States Chamber of Commerce, and listened to a very able speech by Almon Roth up there, recommending that all employers put the question to applicants in regard to Communist or other subversive activities. And I proposed [fol. 433] that we ask applicants to sign an affidavit that they were not members of the Communist Party or any other organization engaged in subversive activity.

I wrote a memorandum on my return to Mr. Beckley and Mr. Wagner, and I asked my secretary to look up in her chronological file and find a copy of that, which she did find.

By Mr. Johnson:

Q. Now, was that memorandum that you referred to prepared by you immediately upon your return from that meeting?

A. Within the week upon my return from that meeting.

The Chairman: What is the date?

Mr. Johnson: March 19 1948.

By Mr. Johnson:

Q. I show you here a document entitled "Inter-Department Memorandum", dated March 19 1948, and ask you

if that is the memorandum to which you are referring as being the one that you made immediately upon your return.

A. It is the memorandum——

The Chairman: Just a minute. Let Mr. Edises look at it.

Let that answer stand. He says, "Yes, it is the memorandum (he) made".

Finished? Go ahead.

A. (continuing) It is the carbon copy of that from our chronological files. The carbon copy of that memorandum.

By Mr. Johnson:

Q. Now, Mr. Cutter, was there some delay in putting that into effect?

A. Yes. Any time I propose anything new to our Industrial Relations Department which is as great a departure as [fol. 434] this, there is usually great objection to it. There was in this case. Those objections were overruled. However, I did approve of their request that instead of making a separate part, that this be included in our application form or material of this nature be included in our application form. And when that was next reprinted it was revised to include this. As I remember, it was nearly a year or perhaps longer from the date of this memorandum before it was actually used.

Q. At the time when you wrote this memorandum, Mr. Cutter, on March 19 1948, was the case of Doris Walker being currently reviewed or considered by you or anyone in the Industrial Relations Department as far as you know with respect to Communist activity or Communist Party membership?

Mr. Edises: That is objected to as leading and suggestive.

The Chairman: Overruled.

A. Not specifically relating to Doris. The Communist activity of any employees or potential employees was constantly in mind.

By Mr. Johnson:

Q. But there hadn't been any recent conferences at that time concerning her case, had there?

A. None.

Mr. Johnson: I offer the document as the exhibit next in order, Mr. Chairman.

The Chairman: Company Exhibit 10.

(Photostatic copy of inter-department memorandum dated March 19 1948 from Fred A. Cutter was received in evidence and marked Company Exhibit No. 10.)

[fol. 435] By Mr. Johnson:

Q. Was there somewhere along the line a second investigation of Mrs. Walker's activities?

A. Yes, there was.

Q. When?

A. Following the publication in the "Labor Herald" in regard to Mrs. Walker's refusal to testify in regard to her Communist activities at an NLRB hearing. That was sometime late in August of 1949.

Q. When you referred to "an article", are you referring to Company Exhibit No. 4, being the article of August 23 1949 from the "Labor Herald" entitled "Fired Cannery Workers to Share \$205,000 NLRB Back Pay Award"?

A. I am.

The Chairman: Is that an exhibit?

Mr. Johnson: Yes, Mr. Chairman.

The Chairman: What number is that?

Mr. Johnson: Exhibit No. 4. Company Exhibit No. 4.

The Chairman: Company 4.

By Mr. Johnson:

Q. Did you personally read that article?

A. I did.

Q. When?

A. When it was referred to me by either Mr. Wagner or Mr. Beckley—I am not sure which.

Q. And was that about the time of its publication?

A. If I remember correctly, it was the same day of issue.

Q. I call your attention to the fact that in that article [fol. 436] there is the statement "FTA also objects to the firing of Doris Walker from one of the canneries because

she refused to answer the question "Are you a Communist?" Then the article further states: "The company claimed she was fired for her political beliefs and the NLRB sustained the company, declaring there was a precedent for such action in a previous firing of another company in a different strike. If FTA accepts the settlement it will reserve the right to continue fighting for back-pay for Doris Walker and the Mar-Pak Cannery workers."

Had you ever seen such a statement before?

A. No.

Q. Had you ever known from any source previously that Mrs. Walker had refused to testify as to whether or not she was a Communist upon such a question being propounded?

A. We had not, no.

Mr. Edises: Now; just a moment. I will ask that that go out as not responsive. The question was, Had you known? The answer purports to relate to the knowledge of others than the witness.

A. (Continuing:) I had not known.

The Chairman: Well,——

Mr. Edises: Just a minute.

The Chairman: All right. Well, that is the answer to the question.

It may go out.

The Witness: May I amplify that?

[fol. 437] Mr. Edises: I will object to the witness volunteering.

The Chairman: Let Mr. Johnson ask questions.

By Mr. Johnson:

Q. What was the discussion at the time this article was presented to you?

A. Well, for the first time we had information that looked as if there was a lead that we could sink our teeth into as far as Communist affiliation on the part of Mrs. Walker.

Q. Did you give any orders or direct any action with respect to that subject matter?

A. Yes.

Q. What did you do?

A. Called in our attorneys and asked them to follow up on it and make a full investigation.

Q. When did you do that?

A. Immediately on reading the article and discussing it with Mr. Beckley.

Q. And what was your order with respect to the investigation that was to be made?

A. The order was for the attorneys to go back in the record of that case and to make a full investigation.

Q. Full investigation of what?

A. In regard to the activities of Mrs. Walker—Communist activities of Mrs. Walker.

Q. Now, did you eventually receive some report or was some information brought back to you?

A. Yes.

[fol. 438] Q. Relate the circumstances. •

A. Well, Mr. Stanton had been in communication with Mr. Beckley for some time after that investigation was started; and finally, when it was completed, there was a meeting to discuss it with yourself, Mr. Johnson, Mr. Stanton, Mr. Beckley, and Mr. Wagner and myself.

Q. When was that meeting arranged, if you remember?

A. We had been trying to set up the meeting for a week or ten days prior to the actual meeting. The actual meeting took place the day before Mrs. Walker was fired.

Q. Namely, on October 5 of 1949?

A. As I remember, that was October 5th, yes.

Q. And where was the meeting held?

A. It was held in Mr. Beckley's office.

Q. Who was present?

A. I have just stated that, Mr. Johnson.

Q. Was that the day that has been referred to here as a day when some grievance meeting was held?

A. That's right. That is the day referred to. The grievance hearing was set up after that date, and the reason that you were there was simply because you intended to go on with this other discussion. And you were there merely as a spectator.

Q. Spectator at what?

A. At the grievance hearing.

Q. And then after the grievance hearing was over with,

did you hold this conference that you referred to concerning Mrs. Walker?

[fol. 439] A. Immediately afterwards, yes. The sole reason for having it at the same time: we had had difficulty enough, even Art and myself, to get together; but to get together with you, we simply went ahead and scheduled the grievance hearing when it came up because we knew that we could dispose of it in a very short period of time.

Q. Was there a discussion at this grievance meeting about your blaming somebody for a radio broadcast?

A. Yes.

Q. What did you say?

A. I think you will find that that is already in the record.

Mr. Edises: It has already been asked and answered, I believe.

The Chairman: Well, do you have any reason for going into it again? He did explain it, I believe—unless you have something further to add to it.

Mr. Johnson: Simply this: As you will recall, we waived cross examination of Mr. Cutter, and he was informed a couple of times by Mr. Edises "Your own counsel will cover that when he comes to it".

Arbitrator St. Sure: He did expand the answer, as I remember it.

Mr. Johnson: That is right. I made a note at the time to cover it when I got to this on direct examination, and that is why I am doing it.

The Chairman: Read the question, please.

[fol. 440] Mr. Johnson: I simply wanted him to explain it.

(Question read.)

A. (Continuing:) I asked Mr. Burke if he was responsible for the attack on the Company made in a broadcast on the previous Sunday, I believe it was.

By Mr. Johnson:

Q. That is the Sidney Roger broadcast?

A. The Sidney Roger broadcast.

Q. At that meeting did you blame Mrs. Walker for that broadcast?

the attorneys as to whether Mrs. Walker had seen many other members of The State Bar on the spinach line.

Q. Do you recall that those parts were actually read at that meeting?

[fol: 443] A. Yes.

Q. Prior to that time had you known those facts?

A. No, we had not.

Q. I call your attention here to page 6 of Company Exhibit No. 5, the portion referring to Mr. Bertram Edises as being the attorney for one of the parties in the proceedings. Had you known that fact prior to that time?

A. No, I hadn't.

Q. Was that read and discussed at that meeting?

A. It was discussed in view of the further information we had in regard to her affiliation with Mr. Edises' firm.

Q. I call your attention to page 6, again, of this Company Exhibit No. 5, the question asked of Mrs. Walker: "You then worked for the firm of Gladstein, Grossman, Sawyer & Margolis, was it?"; and the answer is "& Edises"; and the following question, "Is the Mr. Grossman who was a partner in the firm at that time the same Mr. Grossman who is now the Educational Director for the Communist Party in California?"

Was that read at the meeting and discussed?

A. Yes, it was.

Q. Prior to that meeting had you known that Mr. Grossman was at that time the educational director for the Communist Party in California?

A. No, I had not.

Mr. Edises: May I see that? The section that says that Mr. Grossman is what you said he is.

[fol: 444] The Chairman: It is on page 6 of Company Exhibit No. 5.

Mr. Johnson: What the attorney at that hearing said he was, not what I said.

Mr. Edises: Where was it answered? On what page is the answer?

I just want to find out, Is he now testifying to something which he then learned to be fact?

Mr. Johnson: He is testifying—

The Chairman: No, that isn't the way these questions are put at all. He is asked if he saw this and if he knew about it before.

Arbitrator Heide: He is being asked if he knew whether Mr. Grossman was the educational director of the Communist Party, and I am interested to know whether this document points it out or whether it is simply a question that was asked as to whether or not that is so.

The Chairman: The question was asked and the Trial Examiner apparently sustained an objection to the question. I don't see any answer to the question here. But all that we have before us here is a question of this witness, "Did you see this at that time?" That is, at the time of this meeting on the 5th or 6th of October 1949. He says, "Yes". Then he is asked, "Did you know that that was a fact before that?" He says, "No".

Mr. Johnson: And I am going to tie it in with other evidence, Mr. Chairman.

The Chairman: Whether you tie it in or not, there are the [fol. 445] answers.

Arbitrator Heide: Let me ask you—

The Chairman: Now, what all that proves is another question.

Arbitrator Heide: I know.

The Chairman: It does show this: it shows the type of information that the man had before him at that particular moment and what the state of his mind was.

Arbitrator Heide: When counsel asks "Do you know whether that was a fact?" what is he talking about? "Do you know that that was a fact that that question was asked at the hearing?"

The Chairman: No. I don't think that that question was asked of him.

Let's hear the question.

I think he was asked as to the fact. "Did you know that fact before?"

The Reporter: "Question. Prior to that meeting had you known that Mr. Grossman was at that time the educational director for the Communist Party in California?"

"Answer. No, I had not."

Q. Now, I call your attention to the fact that the article states "The newly-formed California state organization of the Communist Political Association"——

The Chairman: Which article are you referring to?

Mr. Johnson: The one in the second column.

The Chairman: "Communists Elect State Committee"?

Mr. Johnson: Yes, that's right.

The Chairman: That is the only portion of it——

Mr. Johnson: That is germane here, yes.

The Chairman: Can I tear this?

Mr. Johnson: Certainly, as far as I am concerned.

The Chairman: Go ahead. Excuse me.

By Mr. Johnson:

Q. I call your attention to the fact that that article says: "San Francisco, June 13.—The newly-formed California state organization of the Communist Political Association concluded its first convention last week-end with the election of the following officers: . . ." Then it says: "A state committee was elected which, in addition to the officers, in- [fol. 465] cluded the following members and alternates: . . ." And under the alternates there is listed the name of Bertram Edises. Do you recall seeing that document?

A. Yes, I do.

Q. Had you known those facts prior to October 5 1949?

A. No.

Mr. Johnson: I offer that, Mr. Chairman, as Company Exhibit 18.

The Chairman: Company Exhibit 18, page 4 of the "People's World", June 14 1944.

(Photostatic copy of portion of page 4 of "People's World" issue of June 14 1944 was received in evidence and marked Company Exhibit No. 18.)

By Mr. Johnson:

Q. I show you another article from the "People's World", apparently the issue for Thursday, October 31 1946, page 3, under the column "Political Arena", referring specifically

The Chairman: Do you have some comment or question about it?

Arbitrator Heide: No.

The Chairman: If he had said "Yes", he might have started something here.

By Mr. Johnson:

Q. Now, Mr. Cutter, at that meeting that you have referred to on October 5, 1949, in Mr. Beckley's office, did your attorneys present to you any information or documents [fol. 446] referring to a man by the name of John T. McTernan or John Tripp McTernan?

A. They gave us—

The Chairman: You can answer that question "yes" or "no". Did they give you any documents? That is all he asked you.

The Witness: Well, I am trying to—

The Chairman: He doesn't ask you, What document? He says, Did they give you any documents?

A. (continuing) Yes. They showed us some documents.

The Chairman: Next question.

A. (continuing) And they also gave us some information on other documents.

By Mr. Johnson:

Q. What was the information concerning John Tripp McTernan that was presented to you at that time?

A. There was information from The Bar Association as to his previous activities as an attorney, and there was information from other sources as to his activities in the Communist field.

Q. At that meeting were you informed by the attorneys that this John McTernan's middle name was Tripp, T-r-i-p-p?

A. Yes, we were.

Q. Had you known that previously?

A. We had not.

Q. Was there also discussion about whether there had

to an article entitled "Speakers praise Archie Brown". Have you seen that before?

A. Yes.

Q. Where?

A. One of the articles which you showed to us during that meeting.

Q. Now I call your attention to the fact that this article says: "San Francisco, Oct. 30.—Four representative voters speaking last night from KSFO for the Citizens Committee for Archie Brown for Governor, called for a large vote for [fol. 466] the Communist write-in candidate". And the concluding paragraph says: "Brown's record as a union man was praised by Harry Nehrbecki, dispatcher of the CIO Marine Cooks and Stewards. Attorney Bert Edises conducted the program."

Was that document discussed at that meeting?

A. It was.

Q. Had you seen that article at any time previously?

A. I had not.

Q. Did you know the facts referred to at any time previously?

A. No.

Mr. Johnson: I offer that as Company Exhibit No. 19.

The Chairman: Company Exhibit No. 19.

Mr. Edises: You are offering the whole of the article, not just those two passages?

Mr. Johnson: The whole article.

(Photostatic copy of column from "Daily People's World" issue for October 31 1946 was received in evidence and marked Company Exhibit No. 19.)

By Mr. Johnson:

Q. Now I hand you here an excerpt from Reports of the Joint Fact-Finding Committee on Un-American Activities in California referring to the Communist Political Association, and ask you if those portions were pointed out and discussed at that meeting.

A. They were.

Q. I call your attention to the fact that the second reference there, at the bottom of the page under the heading

ever been a licensed practitioner of The Bar by the name of John Tripp?

A. Yes, there was.

Q. What was the information on that subject?

A. That there had not been.

[fol. 447] Q. I show you a document here on the stationery of The State Bar of California dated October 5, '49, and ask you if you have seen that before.

A. "Have" I seen it before or "had" I seen it before?

Q. "Have" you.

A. Yes, I have seen it.

Q. Do you know the circumstances under which this document was obtained?

A. Yes. You phoned and requested a letter to substantiate the information you had already had.

Q. I call your attention to the fact—

Mr. Edises: Just a moment. I ask that the last part of that answer go out. The letter speaks for itself.

The Chairman: Just a moment. Let me read the letter first, please.

All right. Now read the question and answer.

(Question and answer read)

The Chairman: Just a moment. What was your objection to that?

Mr. Edises: It was my understanding that he was attempting to vary the terms of this document.

The Chairman: It seems simple to me. They telephoned.

Mr. Edises: I understood him to vary the terms of this document.

The Chairman: They telephoned The State Bar and asked them to confirm it by letter. That is all I get from that.

[fol. 448] By Mr. Johnson:

Q. Is that your answer, Mr. Cutter?

A. It is.

Mr. Johnson: I ask that this letter from The State Bar dated October 5, 1949, be introduced as the Company's exhibit next in order.

The Chairman: Company Exhibit No. 11.

(Carbon copy of letter dated October 5, 1949, from The State Bar of California to Thomas E. Stanton, Jr., was received in evidence and marked Company Exhibit No. 11.)

By Mr. Johnson:

Q. With respect to the portion of that letter relating to Mr. McTernan, namely, the first paragraph of the letter, had you known any of those facts prior to that day, namely, October 5?

A. No, we had not.

Q. At that time did your attorneys have present certain reports of the Joint Fact-Finding Committee of the California Legislature on Un-American Activities in California?

A. You did.

Q. And did they point out and read to you certain portions from those reports with respect to John T. McTernan?

A. They did.

Mr. Johnson: I have the reports here, Mr. Chairman. For convenience I have had written up typewritten extracts of the portions to which I am going to call his attention.

The Chairman: Has Mr. Edises had an opportunity to check them?

[fol. 449] Mr. Edises: No, I haven't.

The Chairman: I would suggest—

Mr. Edises: I would like to offer an objection to all this McTernan business. I fail to see the logical purport of all this testimony regarding McTernan. What is the significance of it? They haven't laid any basis for dragging McTernan into this thing.

The Chairman: Whether McTernan likes it or not he is in it. If he is given as a reference and—

Mr. Edises: Where is there any showing that he was given as a reference?

Arbitrator St. Sure: There is a statement by Mrs. Walker that she misused his name or a portion of his name and that she had worked for him but only gave a portion of his name in the application form.

Mr. Edises: She obviously was not giving him as a reference or she would have given his name.

The Chairman: No, but his name is on the application blank.

Mr. Edises: His name is not on the application blank. It is a fictitious name.

The Chairman: I understand that. But Mrs. Walker, as I understand it, testified that she had him in mind when she put the name on the application blank.

Mr. Edises: I beg to differ with you, Mr. Chairman. She testified that it was the first thing that came into her head—

Arbitrator Heide: She made it up.

Mr. Edises—and that she had no intention of referring [fol. 450] to McTernan. I submit—

The Chairman: She said she had him in mind.

Mr. Edises: —Mr. Chairman,—

The Chairman: I agree with you. We are not trying McTernan here, but this—

Mr. Edises: But we are.

The Chairman: —is a circumstance that this employer acted on in concluding to make this discharge.

Mr. Johnson: That is the point, Mr. Chairman.

The Chairman: Now, you may think it is groundless and makes no sense at all, but the fact remains that the employer here says "I acted on this". So I am interested in it. As I told you the other day, if the employer acted on a telephone book and said that "That was one of the reasons why I discharged this woman", it seems to me it is relevant.

Mr. Edises: Well, let him say so.

The Chairman: Whether that constitutes ground for just discharge is another question.

Mr. Edises: Well, I just think that it is rather poor sportsmanship to say the least,—

The Chairman: Well, I am not sitting here—

Mr. Edises: —to attempt to crucify someone who is not here or in a position to defend himself, when it is in my opinion so completely remote from the issues of the case.

The Chairman: Well, this isn't a "pink tea" and I don't think that I am a judge of what is good and poor sportsmanship.

[fol. 451] I see several volumes before you there. Have you made a number of excerpts from those volumes?

Mr. Johnson: Yes I have, Mr. Chairman.

The Chairman: Do you desire to check the excerpts against the volumes for accuracy?

Mr. Edises: Well, I would like to look at the volume.

The Chairman: Well, I would suggest—

Mr. Johnson: I realize probably—

The Chairman: —that what we do is this: I will admit the excerpts. And will you make the volumes available to Mr. Edises during the recess?

Mr. Johnson: Yes. I realize that he probably has never had a chance to see these documents before. But I have copies and I will bring them up for him. They are interesting reading.

The Chairman: You can check them, and if you find any inaccuracies in them you can bring them up to him.

Mr. Edises: I am sure that there are inaccuracies.

The Chairman: What I mean is whether the extracts are correct excerpts of the volumes.

By Mr. Johnson:

Q. I call your attention, Mr. Cutter, to the 1947 and 1948 Reports of the Un-American Activities Committee of the California Legislature, specifically to page 187 of the third or 1947 report.—

The Chairman: I think I can shorten this for you a little bit. You needn't make references to pages there. Do your excerpts identify the pages?

[fol. 452] Mr. Johnson: Yes, they do.

The Chairman: Just introduce your excerpts.

Mr. Johnson: Thanks. That will speed this.

By Mr. Johnson:

Q. I show you here certain excerpts—

The Chairman: You might state for the record what these are generally excerpted from. What is the name of the documents?

Mr. Johnson: I have here, Mr. Chairman, on the table —And maybe I had better ask Mr. Cutter.

By Mr. Johnson:

Q. You have seen these books before: 1943, which is the first; 1945, which is the second; 1947, which is the third,

1948, which is the fourth; and the 1949, which is the fifth, Reports of the Fact-Finding Committee of the California State Legislature on Un-American Activities in California?

A. I have.

Q. Were these documents—

The Chairman: Who published them?

Mr. Johnson: The California Legislature.

Mr. Edises: Are they generally known as the Tenney Reports?

Mr. Johnson: Generally known as the—The page here indicates "The Report of the Joint Fact-Finding Committee on Un-American Activities in California".

Mr. Edises: I mean, They are popularly known as the Tenney Reports?

Mr. Johnson: I think that that is the way the "People's World" refers to them, Mr. Edises. I don't read it, so I am not too familiar with it. The title I have given is the [fol. 453] correct report.

The Chairman: Go ahead. Next question.

By Mr. Johnson:

Q. Were these documents brought over and certain portions of them reviewed with you on October 5 1949?

A. They were.

Mr. Johnson: I have the books here, Mr. Chairman. Also, as you suggested, we have typed up the excerpts that were covered.

I hand Mr. Cutter at this time two of them, calling his attention on each one to "John T. McTernan".

Mr. Edises: Have you got copies of those?

Mr. Johnson: Yes.

By Mr. Johnson:

Q. Have you seen the material set forth in those excerpts before?

A. I didn't see them prior to October 5 1949. I saw them at that time.

Q. Were these portions of the reports set forth on these two excerpts read and discussed with you at that meeting?

A. They were.

Q. Now, did you know or were you shown any document in any of these reports listing the middle name of Mr. McTernan?

A. I don't remember whether it was in those reports or from The Bar Association. I remember that for the first time the middle name of McTernan as Tripp came into the picture.

Q. Did you know prior to October the 5th 1949, the date of the meeting to which you have referred, that Mr. John T. McTernan had been associated with the law firm of Gallagher, Katz & Margolis?

[Vol. 454] A. No.

Q. Did you know prior to that date that on September 17 1943, as announced by the "People's Daily World", that Mr. McTernan had been discharged from the Office of Price Administration?

A. No, I had not.

Q. Did you know anything about his teaching at the People's Educational Center prior to October 5 1949?

A. I had not.

Q. Did you know prior to that date that Mr. McTernan had been attending—

The Chairman: Can't you cover this with a general question? It seems pretty plain to me that he didn't know anything about this.

By Mr. Johnson:

Q. You didn't know anything about it?

A. No, I did not.

Mr. Johnson: I ask, Mr. Chairman, that the two documents be introduced as the Company's exhibits next in order.

The Chairman: Do you want to object?

Mr. Edises: Yes. I will on the ground of irrelevancy.

The Chairman: I will overrule the objection for the reasons that I have already stated; that it is put forward as—

information, data, the employer had before it and upon which it acted in making the discharge.

Mr. Johnson: That's right.

The Chairman: The excerpt from the Third Report, 1947, is Exhibit No. 12, consisting of one page; and the extracts [fol. 455] from the Fourth, 1948, Report, which extract consists of two pages, is Company Exhibit No. 13.

(Copy of extracts from Third Report, 1947, and copy of extracts from Fourth Report, 1948, of the Joint Fact-Finding Committee on Un-American Activities in California were received in evidence and marked Company Exhibits Nos. 12 and 13, respectively.)

By Mr. Johnson:

Q. Now, Mr. Cutter, I call your attention to the fact that on Company Exhibit No. 12, the excerpt from the Third Legislative Report of 1947, there is a reference to page 78, referring to "Hazel Grossman, whose husband, Aubrey, is now the admitted Educational Director of the Communist Party for the City and County of San Francisco". Was that portion discussed with you at that meeting?

A. It was.

Q. And was that after you had read the portion of the transcript which I asked you about previously here, namely the transcript of the NLRB hearing, at which Mrs. Walker was asked the question as to who Mr. Grossman was?

A. Yes.

Q. I call your attention also to the fact that on Company Exhibit No. 13 there is a statement at the bottom referring to page 215 of the Fourth or 1948 Legislative Report stating as follows: "Attorneys for the California State Communist Party are Gladstein, Andersen, Resner, Edises & Sawyer of 240 Montgomery Street in the City of San Francisco". Was that portion of the Legislative Report pointed out to [fol. 456] you at that meeting and discussed?

A. It was.

Q. Had you known that fact previously?

A. I had not.

Q. At the meeting that you have referred to on October 5 was there also some discussion about who Dr. William Berke (B-e-r-k-e) was?

A. Yes. He had been given as a reference——

Mr. Edises: Just a minute.

The Chairman: Just a minute.

Mr. Edises: No question is pending.

By Mr. Johnson:

Q. Had you come across his name previously?

A. Yes. He had been given as a reference by Mrs. Walker and he testified that her integrity was beyond question.

Q. I call your attention to the fact that I have handed you an extract from the Fifth or 1949 Legislative Committee report referring to Dr. William Berke. Was that matter discussed at that meeting?

A. It was...

Q. And were you at that time shown the Legislative Report printing the announcement of the California Labor School which lists Dr. William Berke as teaching a course at the winter term from January 10 to March 19 1949?

A. I was.

Arbitrator St. Sure: May I ask a question.

[fol. 457] You referred to this as an "extract" from the report. Is this a characterization or description of an extract, or is it a direct extract?

The Chairman: You don't show any page references in your excerpt.

Arbitrator St. Sure: This seems to be a description of what is in the report, but it does not purport to be a direct quotation from the report.

Mr. Johnson: It refers to page 428 to 432 of the Fifth Report on Un-American Activities in California.

Arbitrator St. Sure: I realize that. But this isn't a direct quote?

Mr. Johnson: No. It is a characterization. This is the material that we presented to him at that time.

Arbitrator St. Sure: In other words, this is an identification of portions of the report and certain information in it?

Mr. Johnson: That's right. In other words, to show you how this was done, Mr. St. Sure, here is the book——

Arbitrator St. Sure: I see it now.

Mr. Johnson:—printing these bulletins, and then on the next page they print the whole thing.

Arbitrator St. Sure: The only reason I asked the question is that you referred to this as an "extract". It did not seem to be an extract. It refers to certain information in the report; is that right?

Mr. Johnson: That is right.

[fol. 458] Mr. Edises: May I see that report, please.

(Copy of Fifth Report was passed to Mr. Edises.)

By Mr. Johnson:

Q. Calling your attention, Mr. Cutter, to page—

The Chairman: Are you on this report of Dr. William Berke again?

Mr. Johnson: Yes.

The Chairman: Well now, are you trying to lay further foundation?

Mr. Johnson: Yes.

The Chairman: I am ready to mark this as an exhibit just like 12 and 13, subject to your same objection, Mr. Edises, without further ado. It is not an excerpt but it is a guide to finding out where you state that data is in the book.

The document entitled "Report on Dr. William Berke", consisting of one page, subject to your objection, Mr. Edises, which is overruled, will be received in evidence and marked Company Exhibit No. 14.

(Copy of "Report on Dr. William Berke" was received in evidence and marked Company Exhibit No. 14.)

By Mr. Johnson:

Q. Mr. Cutter, on that day was it discussed with you that the Fifth Legislative Report showed that Dr. Berke had taught a course at the California Labor School on the subject of "The Soviets—Fact and Myth: Everyday Life in the Soviet Union. How the Soviets Look at the World"?

A. It was.

[fol. 459] Q. Had you known prior to that date that Dr.

Berke had been teaching courses at the California Labor School?

A. We had not.

Q. Had you known that he had been teaching any courses anywhere on the question of "Life in the Soviet Union Today"?

A. No.

Q. At the meeting that you have referred to, were certain issues or photostatic copies of issues of the "People's World" presented to you?

A. They were.

Q. I call your attention first to an article in the "People's Daily World", issue of February 14, 1944, under the heading "Meet the People . . . Around the Bay"; and I call your attention specifically to the article in the second paragraph in the second column entitled: "Doris Marasse, former leader of CIO United Federal Workers is switching jobs . . . She will soon grace the office of outstanding Labor Attorneys Gladstein, Grossman, Margolis & Sawyer". Do you see that?

A. Yes.

Q. Was that discussed with you on that day?

A. It was.

Q. The article was presented to you?

A. It was.

Q. Had you seen that article before?

A. I had not.

Q. Had you ever seen Mrs. Walker's or Mrs. Marasse's [fol. 460] name in the "People's World" previously?

A. I don't read the "People's Daily World".

The Chairman: The answer is "no"?

A. (continuing) No.

Mr. Johnson: I offer the document as the Company's Exhibit No. 15, Mr. Chairman.

The Chairman: Company Exhibit 15.

(Photostatic copy of column from "People's World" issue of February 14, 1944, was received in evidence and marked Company Exhibit No. 15.)

Mr. Johnson: In this instance, Mr. Chairman, I only have three copies.

By Mr. Johnson:

Q. I call your attention to the "People's Daily World" issue for Tuesday, May 11, 1948, column entitled "Dear Editor"; and I call your attention to the last article in that column entitled "Male chauvinism", which is signed "Dobby Walker, Oakland". I ask you if that article was exhibited to you at that meeting.

A. It was.

Q. Did you know at that time who Dobby Walker was?

A. After we saw some of the aliases that you had shown us on other material.

Q. And was the question of the identification of that writer discussed at that meeting?

A. It was.

Q. Were you informed that Dobby was the name used [fol. 461] by Doris Walker?

A. Yes, at that time.

Q. Had you seen this document prior to that time?

A. I had not.

Mr. Johnson: I offer that as Company's Exhibit 16, Mr. Chairman.

The Chairman: Company Exhibit 16.

(Photostatic copy of portion of editorial page of "People's World" issue for Tuesday, May 11, 1948, was received in evidence and marked Company Exhibit No. 16.)

By Mr. Johnson:

Q. At that time, discussing the articles from the "People's Daily World", were references made to portions of the Legislative reports on Un-American Activities mentioning and referring to the "People's Daily World"?

Mr. Edises: Well, Mr. Chairman, I have been letting counsel lead this witness all over the lot, but I think that the line ought to be drawn somewhere. He has been asking strictly leading and suggestive questions all along. I

think that the proper way to have gotten at this proof would have been by asking the witness what he recalled.

The Chairman: Well, it is a convenient way of getting it in. He had apparently a lot of documentary material before him at that time. Here it is.

Mr. Edises: I suspect that Mr. Gardiner Johnson could put almost anything down there and say "Did you see this at that time?" That is no way of really testing his recollection.

[fol. 462] Mr. Johnson: I welcome a complete testing of Mr. Cutter's recollection on these subjects.

The Chairman: I think it is something you can develop on cross examination.

Overruled.

Read the question.

(Question read.)

A. Yes.

By Mr. Johnson:

Q. I show you here a document listing two excerpts referring to the "People's Daily World" as "The official organ of the Communist Party on the west coast"; secondly, as the "West Coast Mouthpiece of the Communist Party * * * published by the Pacific Publishing Foundation, Inc., in San Francisco. * * * The San Francisco office is located at 590 Folsom Street, and the Los Angeles office is at 206 South Spring Street". Was that information pointed out to you in the reports at that meeting?

A. It was, yes.

Q. Had you known previously that the "People's World" was the official organ of the Communist Party?

A. I had taken it for granted previously that it was.

Mr. Johnson: I offer that as Company's Exhibit No. 17, Mr. Chairman.

The Chairman: Company's Exhibit 17.

(Copy of extract from Fifth Report on Un-American Activities in California, page 398, was received in evidence and marked Company Exhibit No. 17.)

of the Communist Party. I think we probably would have taken it for granted that she was active in the Progressive Party for Alameda County.

By Mr. Johnson:

Q. Now specifically, Mr. Cutter, I call your attention to the section of this document, Company Exhibit No. 22, which states: "Subject is presently a member and organizer for the Cannery Club of the communist party". Had you ever received prior to that day any direct statement, affirmative statement, that Doris Brin or Doris Walker was in fact a member of the Communist Party?

A. No, we had not.

Q. Had you ever received prior to that day a direct statement that Doris Walker was a member of and an [fols. 481-485] organizer for the Cannery Club of the Communist Party?

A. We had not.

[fol. 486] HARRY L. DAVISSON, called as a witness on behalf of the Company, having been first duly sworn by the Reporter-Notary, was examined and testified as follows:

Direct examination.

By Mr. Johnson:

Q. What is your full name?

A. Harry L. Davisson.

Q. And that is spelled D-a-v-i—

A. s-s-o-n.

Q. —s-s-o-n. And, Mr. Davisson, where do you reside?

A. Berkeley; 1354 Campus Drive.

Q. What is your occupation at the present time?

A. Purchasing agent.

Q. For whom?

A. Cutter Laboratories.

Q. How long have you been employed in that capacity?

A. About three and a half years.

Q. Just so that it will be clear here, Have you been pur-

[fol. 487-506] chasing agent at Cutter Laboratories since, say, October 10, 1946?

A. Yes, since that date.

Q. For your information, I mention that date because it has been testified here that that is the date when Mrs. Walker was first employed by the Laboratories.

A. I came in in January of 1947.

Q. January 10?

A. January 15 1947.

Q. And when you came in on that date, did you come in originally as purchasing agent?

A. No. Assistant purchasing agent.

Q. Assistant purchasing agent. When did you become purchasing agent?

A. April 1st of the same year.

Q. Of 1947. And you have remained in that capacity since then?

A. Yes.

Q. As purchasing agent, did Mrs. Walker work under your direction or supervision at some time?

A. Yes.

Q. What job did she fill?

A. Clerk-typist.

Q. When did you first know her?

A. Shortly after I came to work at Cutter's. Early in 1947.

[fol. 507] Q. Now, when anything unusual came up on the job in relation to employees, any matter involving discipline or violation of rules, what is your practice with regard to it?

A. Speak to them privately.

Q. Do you ever take the matter up with any of your superiors?

Mr. Johnson: I object to the form of the question. It is assuming something not in evidence. It doesn't identify any matter. I don't know what—

The Chairman: No. He is talking about infraction of rules, some breach of discipline. It relates back to the prior question.

[fol. 463]. The Chairman: Do these references tie to the volumes that you have laid on the table here?

Mr. Johnson: Yes, they do.

Mr. Edises: I take it that these are offered not for the purpose of establishing as fact any of the contentions that counsel is making but merely as showing the basis on which Mr. Cutter acted at the time?

The Chairman: They are admitted for that purpose. I don't know what purpose they are offered for.

Mr. Johnson: I don't have any hesitancy in saying that that is the purpose for which I am offering them: that it was material which was presented to Mr. Cutter and discussed at that time and which he had in mind.

The Chairman: Of course the ultimate question here is, What information did the employer have before him and was he justified in acting on it?

By Mr. Johnson:

Q. Now, Mr. Cutter, I show you an article from the "People's World" issue for Wednesday, June 14, 1944, and I call your attention to the article in the second column entitled "Communists Elect State Committee" and ask you if you have seen that before?

A. Yes.

Mr. Edises: Have you got a copy for me?

Mr. Johnson: Yes. I think I gave some of these out last week when we tried to get it marked for identification.

Mr. Edises: Not that.

[fol. 464] Mr. Johnson: Oh, you will recall this one.

Mr. Edises: Yes. You certainly flagged it for me.

Mr. Johnson: Some of the copies got away from us here. It was offered once before. I have one more.

By Mr. Johnson:

Q. Had you seen that article, Mr. Cutter?

A. Yes.

Q. Where?

A. One of the things that you showed us at that meeting.

[fol. 467] "Communist Political Association", says "Cited as a 'subversive,' 'Communist' organization which sought 'to alter the form of government of the United States by unconstitutional means'"; referring to a letter from Attorney General Tom Clark of the United States to the Loyalty Review Board, released under date of September 21, 1948.

Had you known previously that those were facts with respect to the Communist Political Association as such?

A. I had taken it for granted, Mr. Johnson.

Q. I call your attention to the fact that the second paragraph there says "* * *" after assuming the name of the Communist Political Association on May 20-23, 1944, for strategic reasons, the party resumed the name of the Communist Party of the United States on July 26-28, 1945", with a reference to the Congressional Committee on Un-American Activities, Report No. 209.

Was that statement read and discussed at the meeting of October 5?

A. It was.

Q. And I call your attention to the first paragraph on the page there which says "Thus, no less an authority than William Schneiderman, former secretary of the Communist Party of California, and presently secretary of the Communist Political Association of California, tells us in Marxian language that the Communist Political Association is just the same as the Communist Party that preceded it. Its change of name and change of policy is in strict conformance with Marxian dialectic and a result of the Marxian materialistic interpretation of history plus a [fol. 468] Leninistic 'sharp turn.' The painted leopard is a leopard still".

Was that read at that meeting?

A. It was.

Mr. Johnson: I offer that as Company Exhibit No. 20.

The Chairman: Company Exhibit No. 20.

(Copy of extracts from Second and Fifth Reports of Joint Fact-Finding Committee on Un-American Activities in California, pages 102 and 299, was received in evidence and marked Company Exhibit No. 20.)

The Chairmar: How many more of these documents do you have?

Mr. Johnson: Oh, about four more.

Arbitrator St. Sure: I would like to conclude them now, if you can, and get them in. Is that all right with you?

The Chairman: Can you stay a little bit longer?

Arbitrator Heide: Yes.

The Chairman: Good.

Mr. Johnson: I don't guarantee that the next will go in too smoothly, because we are coming to a more complicated phase of this subject.

The Chairman: Let's give it a try.

By Mr. Johnson:

Q. I hand you a document setting forth extracts from the Joint Un-American Activities Report for 1943 relating to Archie Brown, who is referred to in that "Daily World" article of October 31 1946 as being the "Communist write-in candidate for Governor". Do you recollect discussion on that subject at the meeting of October 5 1949?

[fol. 469] A. I recollect some discussion on this subject.

Q. And were these portions which I have indicated here in the excerpt pointed out and reviewed at that meeting?

A. They were.

Mr. Johnson: I offer that as Company Exhibit No. 21, Mr. Chairman.

The Chairman: Company Exhibit 21.

(Copy of extracts from First Report of Joint Fact-Finding Committee on Un-American Activities in California pertaining to Archie Brown was received in evidence and marked Company Exhibit No. 21.)

By Mr. Johnson:

Q. I hand you a document entitled "Brin, Doris", followed by certain aliases, and I ask you if you have seen that document before.

A. Yes.

Q. Where did you see that?

A. One of the documents which you showed us at that meeting.

Mr. Johnson: I ask that that be marked as Company Exhibit No. 22.

The Chairman: Wait a minute. Let me have the last part of that answer, please.

(Answer read.)

The Chairman: Company Exhibit No. 22.

Mr. Edises: Just a moment.

Arbitrator Heide: Is this an excerpt from something?

Mr. Edises: I am going to object on the ground that no [fol. 470] proper foundation has been laid. We don't know anything about what this document purports to be, where it came from. He tells us that it was handed to him at the time, but I—

The Chairman: Who handed it to you?

The Witness: Mr. Johnson.

The Chairman: Mr. Johnson.

Mr. Edises: Well, perhaps we can get this later from Mr. Johnson.

The Chairman: Did you ask him anything about this document when he handed it to you?

The Witness: Did I ask him anything about this document?

The Chairman: Yes.

The Witness: Yes.

The Chairman: What did you ask him?

The Witness: Whether this information could be supported.

The Chairman: And what did he say?

The Witness: It could.

The Chairman: Did you ask him anything more about it?

The Witness: Well, Mr. Chairman, there was a very considerable discussion in regard to this document and other documents.

The Chairman: Well, you were going to act on these various documents that were submitted to you there. All I want to know is that when he handed you this, did you just accept it as true or did you ask him any questions about where he got the information or anything of that kind.

The Witness: Yes. I asked where he got the information. [fol. 471]. The Chairman: What did he say?

Mr. Johnson: Just a minute.

Arbitrator St. Sure: Just a moment. I am going to interject there.

There is something that bothers me and I think bothers all of us here, and I would like to be on the record. It is the question of going into the state of mind and the motives which caused an action on the part of the employer here. We have adopted a rather peculiar rule that because we did not allow cross examination or any examination of Mrs. Walker as to certain facts which were then deemed to be or did then seem to be material, we would bar this type of inquiry.

Now, it occurs to me that Mrs. Walker's state of mind has been put in issue here as well as the employer's state of mind. Indeed, the very questions that were asked of her by Mr. Edises preliminarily seem to have opened the door. I checked the record briefly this morning, as it was there on the floor behind the Chairman. One of the questions initially asked of Mrs. Walker by Mr. Edises was, "Why did you give certain false answers?" And an objection was made and Mr. Edises stated that "That goes to her state of mind". The objection was overruled.

Similarly, at the conclusion of certain questioning by Mr. Johnson of Mrs. Walker which appears on page 120, she was asked if she had any other reason for giving the false answers, and she said, "No". She was then asked if she was a member of the Communist Party. To which objection was made, and under the previous ruling the objection [fol. 472] was sustained.

It seems to me that the state of mind that we are going into here on the Employer's side is no less important than the state of mind that may have existed on the part of Mrs. Walker. And if we are going to not come out with a completely unbalanced record from the point of view of either inference or fairness or inquiry, I think that we have got to review the rulings that we have had and take a look at where we are going with this entire record.

Frankly, it bothers me considerably.

The Chairman: Well, there have been a number of docu-

ments that have come in here from the Company's side as to which the source has been revealed.

Arbitrator St. Sure: Yes.

The Chairman: And there was one document, namely, that report, where for reasons which were stated at the time was not put in as an exhibit. All I aim to do as far as this particular exhibit is concerned is to ascertain whether you desired to reveal the source or not. If you don't, let it sit that way.

Mr. Johnson: My answer to that would be exactly this, Mr. Chairman:—

The Chairman: The same answer you gave with respect to the Credit report?

Mr. Johnson: Generally, yes. That had we been afforded an opportunity to inquire exhaustively and without any restriction into this lady's Communist Party activities at the [fol. 473] time when we sought to do so, probably our attitude would be different. But we have been foreclosed from that. Now Mr. Edises and the Petitioner are exceedingly anxious to find out where we got some of these documents, a myriad of details as to probably the discussions with the various informants. Our position is that before we are to be tried on that subject, we are entitled to proceed in our way and at our chosen time to investigate or at least inquire of her as to her statements with respect to this Communist activity. All this information unquestionably goes to that was well as to the extent of the misrepresentations and the motive for them.

Mr. Edises: Mr. Chairman?

Mr. Johnson: But this particular document unquestionably pertains directly to the Communist Party activity and membership.

Arbitrator St. Sure: I would like to make my position clear. I am not concerned with protecting the basis of the source of information. That is something that counsel may object to if he desires or may not, as he desires. But I am concerned, however, with the fact that we did have here presented to the witness Doris Walker a photostat of a document concerning which counsel sought to question her. The answer as to whether or not the document was authentic lay in her power to give. She was foreclosed

from giving the answer by a ruling that this Board made.

I assume that document was one of the documents that was shown at this meeting with Mr. Cutter. Maybe I am anticipating, but I am quite sure that it must have been. Obviously, if the fact of authenticity cannot be checked with [fol. 474] the witness who is alleged to have written it, to allow a corollary inquiry into the source of that information or the source of that document seems to me to be a completely irrational saying. I think maybe the whole procedure to which we agreed now develops to be a rather difficult thing to continue to steer down the road.

Mr. Edises: Mr. Chairman, may I be heard on this?

The Chairman: Are you finished?

Arbitrator St. Sure: I have.

The Chairman: Do you want to say anything?

Arbitrator Heide: No.

Mr. Edises: The odd part of it is that while they are exceedingly eager at this time to inquire of Mrs. Walker whether she is a Communist and whether she signed that document, they were perfectly willing to fire her, with all the consequences, without asking those questions at that time.

Now, that is the basis, the primary basis, of distinction between the questions that we are asking and the questions that were asked of Mrs. Walker. I certainly feel that the question here is not Mrs. Walker's state of mind but the Company's state of mind. She did not fire herself. The Company fired her. We are entitled to inquire into their good faith.

On the question of that document, they had it presumably at the time. Why didn't they ask her then?

The same goes with respect to the report of that detective agency. It is our contention that that document was in the Company's possession at the time, within their [fol. 475] knowledge. The question of the Company's knowledge in 1947 is a highly pertinent issue in this case.

Apparently our hands are to be tied. They can put documents into the record without foundation. But when we ask to be permitted to examine a document which was crucial to the question of their understanding and their motives, we are barred from doing it.

We have not attempted in any way to limit the Company with regard to exploring matters that they explored or went into with Mrs. Walker during her employ. We feel that anything that occurred afterwards or anything that was not asked her afterwards is in an entirely different category.

Arbitrator St. Sure: Since I perhaps started this thing I want to simply add to my statement of what bothers me:

On page 34 of the transcript there appears the following question by Mr. Edises:

"Question. Now, you did not state under the heading of 'Previous Employment' your employment with this law firm or your employment with the canneries. Will you tell the Board why you didn't list those?"

"Answer. Well, I had been told by persons I knew in the CIO that Cutter Laboratories was——"

There the question was interrupted by Mr. Johnson.

"Mr. Johnson: This is objected to, Mr. Chairman, as being hearsay of the rankest kind;" (self-serving, and so on).

Then this statement from Mr. Edises:

"Mr. Edises: Mr. Chairman, it goes to her state [fol. 476] of mind," (that is, the question: "Why didn't you reveal these things or list these things?") "which is a matter of fact."

The Chairman then stated that he doubted that it was hearsay, "and even if it is, there is nothing unusual about hearsay coming in in arbitration proceedings," and so forth. "The objection is overruled."

Then she completed the answer on the basis of Mr. Edises' statement that it went to her state of mind, and she gave her reasons why she had not revealed information.

Now we come to page 120, when an attempt was made to cross examine on that same subject, and Mr. Johnson took the witness over a reiteration of why she had failed

to make the revelation, and we come to the bottom of the page where we find this question by Mr. Johnson:

"Question. I see. So that, as you expressed then, your purpose or motive in making these concealments and misrepresentations was because you knew that if you told the truth they wouldn't hire you?"

"Answer. That's correct.

"Question. Now, did you have any other purpose in making those misrepresentations?"

"Answer. No.

"Question. Mrs. Walker, are you now or have you ever been a member of the Communist Party?"

And then comes the shutting off of that inquiry.

Now, certainly there has been a lack of ability to cross [fol. 477] examine as to the state of mind or motives of Mrs. Walker in view of the rulings that we have been making here. I am not saying that we are in exactly the same situation with regard to the thing that we are getting into now by way of objection or even reluctance to reveal the source of information, but it does seem to me that it is pretty much of the same piece and it does seem to me likewise that our previous ruling on the matter of cross examination of Mrs. Walker as to her state of mind, in view of what has since been developed as to the Employer's position, leaves us with a pretty incomplete or lopsided kind of a record.

The Chairman: Well, the rulings that we have made permitting the witness to decline to answer a question and permitting the other side to decline to reveal the sources of material leave us without what might be the best evidence on the subject, what might be direct evidence; but they will still leave us a record from which we can draw inferences one way or the other. Maybe it is not the best kind of a record that we could have before us, but there is enough there to act on.

Mr. Edises: May I say this:—

The Chairman: These two Board members have been going along with me on these rulings, not Mr. Heide altogether, but on some of them, and the course that we have taken here was at my own suggestion. It is not their

responsibility. I was actuated primarily by a desire to conclude these hearings, if possible, without having them interrupted by a voyage into court, which would seem to me to be inevitable.

[fol. 478] Arbitrator St. Sure: I think we all had that feeling.

The Chairman: If we instructed Mrs. Walker to answer and she refused, there would have been an interruption of the proceedings by a voyage into court. And by the same token, as far as your subpoena is concerned you could undoubtedly, I presume, go to court and get a writ of mandate and compel me to issue that subpoena.

What I would like to do, gentlemen, is to go ahead and close this record. As I said earlier this morning, it may be that I may reach some conclusions that will wash a lot of these things out on some of these ultimate questions. On the other hand, if I do come to the conclusion that either party or both parties has or have been denied a fair hearing as a result of the rulings that we made here, I will call you back into session again and we will put everybody under compulsion, and you can all go to court and have a good time, if you want to do that.

Now, on that basis I will abstain from asking Mr. Cutter any further questions and admit the document.

Company Exhibit 22.

(Copy of typewritten memorandum headed "Brin, Deris" was received in evidence and marked Company Exhibit No. 22.)

Mr. Johnson: Mr. Cutter?

The Chairman: Of course you have legal rights. You have the right to put people under compulsion and all that sort of thing. But it seems to me that as a Board of [fol. 479] Arbitration we are under a duty to attempt to reach a conclusion that does not involve a lot of court action, if that is possible. And that is what our desire is, and I think that that is the main reason why the two other Board members have come along with these rulings.

Arbitrator St. Sure: I will agree with that. I think we all felt that if it were possible to dispose of this matter in

arbitration without resort to the courts, we all desired to do it that way.⁶

The Chairman: Next question.

By Mr. Johnson:

Q. Calling your attention, Mr. Cutler, to Company's Exhibit No. 22, I refer you specifically now to the first paragraph beginning with "Brins'" and running down five or six lines through the vital statistics information. I ask you whether or not prior to this day you had known that Mrs. Walker at any time used the nickname "Dobbie".

Mr. Edises: Just a moment. I will object upon the ground that it assumes something not in evidence: namely, that on this date he had any reasonable basis for knowing anything.

The Chairman: Well, he talked about this document here. I will overrule the objection.

I understand that that is the drift of the prior testimony.

A. Prior to this date we had not known that Mrs. Walker had gone under the name of "Dobbie". We had been familiar, I believe, with most of the vital statistics here.

Well, I think we might have taken it for granted that she was a member of the Lawyers' Guild. As I remember, we [fol. 480] had no knowledge of that.

We didn't know that she was a member of the United Federal Workers of America, a Communist Party front. Nor did we know that she had been a member of the United Office and Professional Workers Union, Chapter 34. Nor that she was the president of the Voters' League of San Francisco and the Bay Area. Nor did we know that her husband, George Walker, was a member of the Communist Party and an organizer; or that he was the former State Literary Director of the Communist Party and former president of the International Bookstore, a Communist Party front in San Francisco. Nor had we known that his sister was an active member of the Communist Party or that her husband was convicted of criminal syndicalism and had served time in San Quentin. Nor had we known that Mrs. Walker was an organizer for the Cannery Club

Read the question.

(Question read.)

The Chairman: Read both the questions.

(Last two questions read.)

A. If the situation warranted I would.

By Mr. Edises:

Q. Now specifically with respect to Mrs. Walker, Mr. [fols. 508-510] Davisson, Have you ever discussed any problem relating to her with any of your superiors?

A. Yes. The frequent absence on union business.

Q. Anything else?

A. That's all.

Q. Did you ever make any complaint regarding the quality of her work?

A. No.

Q. Did you ever make any complaint regarding her distribution of leaflets?

A. No.

Q. Did you ever hear about distributing any leaflets in the plant?

A. I have seen her distributing them at the gate.

Mr. Edises: Oh, you have.

The Chairman: Just a moment. I didn't hear the answer.

The Witness: I had seen her distributing them at the gate.

By Mr. Edises:

Q. Did you ever have any discussion with any of your superiors—any discussion—with respect to alleged Communist activities of Mrs. Walker?

A. No.

Q. Were you ever questioned by any of your superiors as to whether she engaged in Communist propaganda on the job?

A. Definitely not.

Q. They never asked you about that?

A. No.

[fol. 511] FRED A. CUTTER, the witness on the stand prior to the recess, resumed the stand and further testified as follows:

Direct examination (Resumed).

By Mr. Johnson:

Q. Mr. Cutter, before the noon adjournment I had shown you the document that has been marked Company Exhibit No. 22. Now calling your attention to that document, did you state that prior to October 5, 1949 you never had knowledge of any specific charge or statement that Doris Brin or Doris Walker was in fact a member of the Communist Party?

A. That's correct.

Q. And, similarly, that you had never had knowledge of any specific charge or statement that she was a member of the Cannery Workers' Club of the Communist Party?

A. That is correct.

The Chairman: That has been asked and answered.

By Mr. Johnson:

Q. Now, were this document, Company's Exhibit No. 22, and the facts that are stated in that document among the things that you had in mind and considered at this meeting on October 5?

A. It was.

Q. And in reaching your decision on Mrs. Walker's case, were those among the things that you considered?

[fol. 512] A. It was.

Q. Now I show you a document here headed "Doris Brin Marassee" and certain other statistical information, and ask you if you have seen that document previously.

A. Yes, I did.

Q. Where did you see that?

A. I saw it in Mr. Beckley's office on October 5.

Mr. Edises: Is there going to be some testimony based on this document?

Mr. Johnson: Yes.

Mr. Edises: Then I ask the right to examine him on voir dire before there is any testimony based on it.

The Chairman: All right. Go ahead.

Are we in the same situation with respect to this document as we were with Company Exhibit No. 22 as to source?

Mr. Johnson: I assume we are going to be, yes.

The Chairman: Let's not talk about "assumptions," because you are the doctor.

Mr. Johnson: Well, Mr. Chairman, I am not exactly——

The Chairman: Well, I understand.

Mr. Johnson: If Mr. Edises is going to inquire into things such as the source of this document and where we got it and what efforts we made to get it, at a time when he precludes us from inquiring directly of Mrs. Walker into the question of whether she was a Communist Party member, as we allege and as this evidence shows, then of course I am forced to take the position that, he having precluded [fol. 513] me from going into that issue, naturally we are going to——

The Chairman: You are taking the same position with respect to this document that you took with respect to 22?

Mr. Johnson: That's right.

The Chairman: All right.

Mr. Johnson: We take the position that we would welcome the most exhaustive investigation, within legal limits.

The Chairman: You have already stated that position.

Mr. Johnson: We want the record to show on each document that that is the position we take.

The Chairman: Well, it is the same position that you took with respect to 22.

All right.

Examination on voir dire.

By Mr. Edises:

Q. Now, Mr. Cutter,——

The Chairman: You can go ahead, but you understand where you are going.

Mr. Edises: Well, I have a faint suspicion.

By Mr. Edises:

Q. Mr. Cutter, when did you first see this document?

A. This or a document similar I saw in 1949, on October 5.

Q. Was that at the conference with your lawyers that you have been testifying about?

A. That's correct.

[fol. 514] Q. Which conference occurred after that grievance meeting?

A. That is correct.

Q. Who showed it to you?

A. Mr. Johnson.

Q. What did he tell you about it?

Mr. Johnson: That is objected to as being incompetent, irrelevant and immaterial. We object to Mr. Edises inquiring into this subject in view of the fact that we have been precluded—

The Chairman: Well, it is the same objection that you lodged in connection with 22?

Mr. Johnson: That's right.

The Chairman: I will sustain the objection.

Mr. Edises: We will object to any further questioning based on it.

The Chairman: Well,—

Mr. Johnson: Is that the end of your examination?

The Chairman: —there hasn't been any further questioning yet.

Mr. Edises: The Chairman has indicated he will cut me off from any further questioning along this line, so I am not going to waste people's time by asking questions.

The Chairman: I wouldn't say that. I wouldn't say that. It depends on what the question is.

By Mr. Edises:

Q. Did he tell you that he believed that he got it from an authoritative source?

Mr. Johnson: The same objection, Mr. Chairman.

[fol. 515] The Chairman: The same ruling.

By Mr. Edises:

Q. Did you make any independent check with respect to any of the matters referred to in this document?

Mr. Johnson: The same objection. It is an attempt to get around this in another way.

The Chairman: No. I think that that is a different kind of a question.

Mr. Johnson: Well, we take this position, Mr. Chairman: that whether Mr. Cutter made the investigation or we did or someone else did, when Mr. Edises, by his objection and the ruling which followed, shut us off from inquiring directly of this woman into the question of whether or not she was a member of the Communist Party, he can't be allowed to go around the fringe of that and himself inquire into it piecemeal at a time when he is stopping us from getting to the heart of the very fundamental question. And I suggest that if he is allowed to do that, seriously we are going to wind up here with a record which is so obviously unbalanced because we are precluded from asking the direct and forthright question of this woman and she is allowed to sit here and refuse to answer, at a time when Mr. Edises by these indirect questions is skirting around the fringe of the same issue and trying to find out obviously where this damaging information came from.

Mr. Edises: In other words, you ask him all the questions you want to about the document, and when I try to ask him something I can't do it.

Arbitrator St. Sure: May I suggest that that is exactly [fol. 516] the posture in which we find ourselves, and I am speaking now as a management representative on this Board, in connection with the situation involving Doris Brin Walker—

Mr. Edises: They didn't ask—

Arbitrator St. Sure: I agreed to go along with the ruling at which the Board arrived, that we would not instruct Mrs. Walker to answer questions concerning Communist Party affiliation; and immediately when the reverse situation began to come into the inquiry, namely, your desire to probe into the motive and the basis for information upon which the Employer acted, I endeavored then to point out that we should at least try to keep the hearing in balance. And I still think that that is a proper position to take as long as we pursue this initial rule which was made. If you want to impeach the judgment and the motives of the manage-

ment, I think they have exactly the same right, and perhaps an even greater right, to impeach the motives and testimony of Mrs. Walker, who has declined to answer questions though she was the one who brought the proceeding before this Board.

Mr. Edises: I certainly must disagree with Mr. St. Sure. The Company discharged her; she didn't fire herself. It is not her motives that are on trial here; it is the Company's motives.

Mr. Johnson: To this specific question, Mr. Chairman, we raise the additional objection that it is not properly a part of any voir-dire examination. It doesn't relate to the document. Apparently he wants to know if Mr. Cutter made an independent investigation of the facts stated in the document—[fol. 517] ment—which is not voir dire at all.

Mr. Edises: Well, I think your objection there is technically sound and I will concede it.

The Chairman: Well, if you concede that,—

Arbitrator St. Sure: Is there something pending, then?

The Chairman: —let's pass on to another question.

Have you got anything more?

Mr. Edises: Not on voir dire. I am foreclosed from asking what I would like to ask about it.

The Chairman: Well, you are not up against a blanket foreclosure. I don't want to let that assertion stand in the record.

Do you have any further questions?

Mr. Edises: They would all be with relation to the authenticity and validity and source of this document, Mr. Chairman.

The Chairman: Do you want to ask any further questions?

By Mr. Edises:

Q. Do you know where this document came from?

A. Yes. From our attorneys.

Mr. Johnson: I object to that, Mr. Chairman,—

The Chairman: The same objection?

Mr. Johnson: —on the same grounds stated.

The Chairman: The same ruling. Sustained.

By Mr. Edises:

Q. What form was it in when you saw it? Was it type-written or was it handwritten? Was it a carbon or was it an original, or what?

A. It was either in this exact form or approximately the same. This may be it, for all I remember.

[fol. 518] Q. Was it signed in any way?

A. No.

Q. Did you attempt to establish in any way whether the document was authentic?

Mr. Johnson: The same objection, Mr. Chairman.

The Chairman: Well, you are back to the question that you conceded was not a proper question on voir dire, aren't you?

Mr. Johnson: That's right.

Mr. Edises: No. That is a little different.

The Chairman: A "little" different. A "little" bit.

The Witness: A "little" bit.

Mr. Edises: Different enough.

Arbitrator St. Sure: I think in all fairness, from the point of view of the position of the members of the Board, that if the question of determining the authenticity of the documents is to be gone into, we ought to go back to the original "\$64 question" about an exhibit which was offered here and concerning which Mrs. Walker was questioned as to authenticity of her signature. We can't blow hot and cold on these things.

Mr. Edises: I submit that we are not blowing hot and cold.

The Chairman: We haven't gotten to that yet.

Arbitrator St. Sure: It was asked.

The Chairman: I understand that. But I mean the document is still floating around here.

Arbitrator St. Sure: That is exactly my point.

The Chairman: It might light in our laps and it might not.
[fol. 519] Arbitrator St. Sure: If Mr. Edises wants to open it up, let's open it up all the way.

Arbitrator Heide: The document was admitted.

The Chairman: It is not in evidence yet. It is in suspense.

That is where it is. It may rise up and harass us and it may not.

Arbitrator Heide: But it is part of the Company's case; one of the things that we are going to have to determine on the Board whether it is material or not.

The Chairman: Not yet.

Arbitrator Heide: Isn't that correct?

The Chairman: Not until somebody starts doing something with it. I don't want to start fanning ghosts down here. It is in the offing, but when it gets here we will deal with it. Meanwhile I don't see much point in talking about it.

Mr. Edises: Mr. Chairman, so that I won't be confused with the complete illogicality, the difference between my other question and this is: I asked if he had made any investigation into the activities referred to. At least that is what I intended to ask. In this case I was referring to an investigation into this particular document—which I think would be proper on voir dire except for your ruling.

Mr. Johnson: I submit that all of the objections, including the one that it is not proper voir dire, would apply to that question.

Mr. Edises: I have no further questions. I presume that your ruling—

[fol. 520] The Chairman: I will sustain objection to that question, yes.

Mr. Edises: —is that it is sustained.

The Chairman: Next question.

Mr. Johnson: That is the end of your voir dire?

Mr. Edises: Yes.

Direct examination (Resumed).

By Mr. Johnson:

Q. Mr. Cutter, calling your attention here to the statistical information—

The Chairman: Wait a minute now before you go into the document. Are you going to offer it?

Mr. Johnson: Yes. I offer it as the exhibit next in order.

Mr. Edises: We will object upon the ground that no proper foundation has been laid.

Mr. Johnson: Exhibit 23.

The Chairman: You can have all your other objections that you noted to 22.

Mr. Edises: Thank you.

The Chairman: And the same ruling that we made before.

Admitted. Company Exhibit 23.

And you can renew it in the form of a motion to strike at the close of the case.

Company Exhibit 23.

(Carbon copy of memorandum headed "Doris Brin Marasse" was received in evidence and marked Company Exhibit No. 23.)

[fol. 521] By Mr. Johnson: //

Q. I call your attention to the vital statistic information, being the heading listing the names and the date of birth, marriage and so forth, and ask you if you knew that information prior to October 5, 1949.

A. As I remember, we knew everything but the "Dobby" in the vital statistics.

Q. Now calling your attention to the following statement: "Doris Brin Marasse was issued 1945 Communist Party membership card #40360". Prior to that date had you ever been informed by anyone or did you know from any source that it had been stated or charged or claimed that Doris Brin Marasse in fact had been issued any membership card in the Communist Party?

A. No. The fact that there actually was a membership card in existence and the known number of it, the fact that she was a member, was a bombshell to us.

Mr. Edises: Now, I ask that that go out as the conclusion of the witness, self-serving.

The Chairman: Granted. Let the answer "No" stand. Next question.

Mr. Edises: May I suggest that since obviously counsel is going to take him down this list and burden the record with a series of these questions, if he wants to stipulate that the witness would answer that he didn't know any of this, I will so stipulate.

The Chairman: You mean he didn't know anything that is on this sheet of paper?

[fol. 522] Mr. Edises: I presume that he will say that.

Mr. Johnson: I don't think that that is the truth.

The Chairman: I would like to hear it rather than have a stipulation.

By Mr. Johnson:

Q. I call your attention to the statement that "On February 9, 1946 Doris Brin listed the following information on a Communist Party interview form:". Prior to October 5, 1949 had you ever had any knowledge from any source or any information that Doris Brin had listed any information on a Communist Party interview form at that time?

A. No, we hadn't.

Q. Namely, February 9, 1946?

A. We had not.

Q. Calling your attention to the information under the heading "Communist Party Experience:"—

The Chairman: Well, doesn't all the rest of that wash out with that answer?

Mr. Johnson: No, it doesn't.

The Chairman: Why not?

Mr. Johnson: Because—

The Chairman: You asked the question. The statement appears here "On February 9, 1946 Doris Brin listed the following information on a Communist Party interview form:". That sweeps, as I understand it, everything that is on the rest of that page, doesn't it?

Mr. Johnson: Oh no.

[fol. 523] The Chairman: Why not?

Mr. Johnson: Because there is certain information here that he must have known which follows.

The Chairman: Then why don't you put him to it that way? He answers your blanket question by saying that he didn't know any of that information.

Mr. Johnson: No. He says that he didn't know that she had filed or filled out an interview form.

The Chairman: All right. Go ahead.

By Mr. Johnson:

Q. Calling your attention to the "Communist Party Experience", which says as follows: "Doris?"—

The Chairman: Can you go at it the short way?

Mr. Johnson: Yes, I will shorten it.

By Mr. Johnson:

Q. "Doris Brin joined the Communist Party in June, 1942". Had you known that?

A. No.

Q. "No disciplinary action taken against her at the time of the interview". Had you known that prior to October 5?

A. No.

Q. The statement: "She had held positions of 'Organizer', 'Assistant Organizer', 'Membership Director' and 'Educational Director' of various Communist Party—"

The Chairman: Wouldn't it shorten this thing to ask him what he did know rather than what he didn't know?

Mr. Johnson: Possibly.

The Chairman: Just glancing at this, it looks to me as if [fol. 524] the answer is going to be fairly obvious to most of these questions.

The Witness: I was trying to go down through this and see if there was any information here that I knew.

The Chairman: Look through to see what appears under that initial statement about the interview form and tell us what you knew about it. Tell us what you did know.

The Witness: As I stated once before, I think I would have taken for granted that she was a member of the Lawyers Guild once we knew she was an attorney.

Arbitrator Heide: But you didn't know that.

The Chairman: Well, the question is kind of vague as to when he knew.

When you answer this question and say what you knew, can you fix the time?

Arbitrator Heide: It is a waste of time, it seems to me.

Mr. Johnson: What was that last remark of Mr. Heide?

The Reporter: "It is a waste of time, it seems to me."

The Witness: We hadn't known that she was a member of UOPWA, or Local #34 of UOPWA, prior to that time.

As far as I am concerned, Mr. Johnson, I don't remember, except for the inference in the August—oh, what was it?—23rd, I think it was, issue of the Labor Herald.

The Chairman: What year was that?

The Witness: 1949. Where we made—I think it is stated there that she was a member of the FTA.

[fol. 525] I don't think any of this information—that I had had any of this information prior to October 5 1949.

By Mr. Johnson:

Q. Mr. Cutter, referring to Company Exhibit No. 23, can you tell us whether or not that document and the facts stated in it are among those things that you had in mind and considered in coming to some decision as to the action to be taken on Doris Walker's case on October 5 '49?

A. It was.

Q. Now I show you a document which has been marked Company Exhibit 6 for identification and ask you if that is one of the documents that was discussed during the October 5 conference.

A. It was.

Q. Were the facts stated there discussed with you at the meeting?

A. They were.

Mr. Edises: Which one are you referring to? That handwritten letter?

The Chairman: Company Exhibit 6 for identification. Is that what it is?

Mr. Johnson: That's right.

I offer the document in evidence, Mr. Chairman.

Mr. Edises: Now just a moment. Well, I don't want to burden the record, but I would like to ask the same questions en voir dire of this witness before you rule on its admissibility.

The Chairman: All right. Now, when you say "the same questions", which ones?

Mr. Edises: The ones that I did—

[fol. 526] The Chairman: With respect to Company Exhibit 23?

Mr. Edises: 22 and 23. 23.

The Chairman: 23?

Mr. Edises: Yes.

Mr. Johnson: May I broadly register, then, the same objections?

The Chairman: Yes. We will stipulate that you asked the same questions, the same objections were made and the same rulings were made. Is that what you want?

Mr. Edises: That is not what I want but that is what I will accept.

The Chairman: I mean that that is what you want immediately.

Mr. Edises: Yes, sir.

The Chairman: Let the record show that.

Have you any additional objections that you want to level at this document?

Mr. Edises: Perhaps I could ask him the same questions that you permitted.

The Chairman: No. I said "any additional objections" that you want to level at this document. You can have all the objections that you levelled at Company Exhibits 22 and 23 considered to be levelled at this document.

Mr. Edises: I would like to ask a couple of questions of the witness that would, I think, come within the scope of voir dire.

Examination on voir dire.

By Mr. Edises:

Q. Were you shown a photostat or an original document?

[fol. 527] A. I was shown neither.

Q. I am speaking of Company Exhibit 6 for identification.

A. That's correct.

Q. Didn't you testify a moment ago that you were shown this?

A. No, I did not.

Q. What did you testify?

A. I testified that this document was discussed.

Q. When did you first see this document?

A. About a week ago.

Q. Oh. Just one week ago?

A. That's right.

Q. Is that it?

A. That's right.

Q. So that it wasn't on the basis of your having seen this document that you fired her?

A. No. But we had had a full discussion about this document.

Q. What do you mean by "we"?

A. The attorneys, Mr. Beckley, Mr. Wagner and myself.

Q. Was that on that same afternoon?

A. That's right.

Q. October 6?

A. October 5th, I believe it was.

Q. October 5th?

A. Right.

Q. Well, was there a copy of the document?

A. No. Our attorneys told us of what the document contained in rather complete detail and said that they believed that the document could be available for any hearing that came up.

Q. Did they tell you where they had seen it?

Mr. Johnson: That is objected to, Mr. Chairman. Same ground as the objections heretofore stated.

The Chairman: Sustained.

By Mr. Edises:

Q. So all that they said was that they had a document in their (sic) handwriting?

A. They didn't state that they had a document in "their" handwriting. They stated that there was a document in her handwriting that went into rather complete detail as to her recantation of having fallen off the Party line and how that everything she did was to "strengthen the Party".

Q. Did you ask to see that document at that time?

A. I did not.

Q. Did your attorney ever tell you that it is a violation of the law for the Federal Bureau of Investigation to disclose any information to a private party?

Mr. Johnson: Just a minute.

That is objected to, Mr. Chairman, as being incompetent, irrelevant and immaterial; assuming something not in evidence in a very obvious effort to get around the ruling that you have just made about the question of where the document came from.

The Chairman: Sustained. Sustained.

Mr. Edises: That goes to good faith.

The Chairman: Sustained.

[fol. 529] By Mr. Edises:

Q. Had you ever discussed this document before that date?

A. No.

Q. Did you know about this document before that date?

A. Didn't know that the document was in existence before that date.

Mr. Edises: How long— Well, never mind. I have some more questions but they are not really voir dire. I will reserve those.

Mr. Johnson: I offer the document in evidence, Mr. Chairman as Company Exhibit 6.

Mr. Edises: To which we object.

The Chairman: I think you have all your objections preserved.—

Mr. Edises: I think so.

The Chairman: —and it comes in subject to a motion to strike.

The objections are overruled. Company Exhibit 6 for identification becomes Company Exhibit 6 in evidence.

(Photostatic copy of letter over signature reading "Doris Brin" 7/10/46 heretofore marked for identification was received in evidence and marked Company Exhibit No. 6.)

• Direct examination (resumed).

By Mr. Johnson:

Q. Mr. Cutter, I call your attention to the fact that in this Company Exhibit 6 references are made to "Lloyd". [fol. 530] The opening sentence says: "I made the following statement to Lloyd today." The second paragraph on the first page says: "After my discussion with Lloyd and Carroll Monday morning", and certain other information. You said you saw this copy about ten days ago?

A. A week or ten days ago.

Q. After you had looked at the document did your attorneys present to you an extract from the Report of the Un-American Activities Committee referring to Lloyd Lehmann and Carroll Barnes as functionaries of the Communist Party in Alameda County?

Mr. Edises: Just a moment. That is objected to as incompetent, irrelevant and immaterial.

The Chairman: Sustained. Sustained. I don't see the materiality of it. I will hear you if you want to be heard.

Mr. Johnson: Well, it is merely offered—

The Chairman: I mean, you are talking about something that was communicated to him ten days ago, long after the discharge occurred.

Mr. Johnson: That's right.

The Chairman: I don't see the materiality.

Mr. Johnson: Merely for the purpose of identifying these characters who are referred to in this letter.

The Chairman: Well, what difference does it make about when that was communicated to the witness?

Mr. Johnson: I think it is relatively unimportant. These legislative reports have been more or less brought into [fol. 531] the record here and they are official—

The Chairman: If you want to attempt to identify those names, you can pursue that. But I don't see that the question that you have asked the witness here is material. I will sustain the objection.

Mr. Johnson: I think you are right. I think that that had better be handled in another way.

Mr. Edises: Mr. Chairman, it occurs to me that I should have added to the objection to Company No. 6 the objection that inasmuch as the document was not seen by the witness, according to his testimony, until about ten days ago, it obviously could not have been a basis for action with respect to Mrs. Walker's discharge. That doesn't mean that he couldn't ask him questions, as he did, about conversations held prior to her discharge. But as far as introducing the document, it seems to me that it is going pretty far afield to introduce a document that they didn't see and therefore didn't rely on as a document at the time that this action took place.

The Chairman: Well, it is tenuous. He says that the contents of the document were communicated to him and the nature of the document was explained to him.

Mr. Edises: Well, maybe we can—

The Chairman: I will overrule that additional ground of objection.

By Mr. Johnson:

Q. I call your attention, Mr. Cutter, to the statement in that Company Exhibit No. 6 reading as follows: [fol. 532] "I tried to evaluate my action, as I try to evaluate whatever I do, from the point of view of the welfare of the working class and the strengthening of the Party"; and ask you whether prior to October 5 1949 you had ever been informed directly by anyone that Doris Brin or Doris B. Walker had ever signed any document in which she made that statement.

A. No, I had not.

Q. I call your attention to the fact that the letter makes reference to "the resolution on the maritime strike introduced into the Cannery Workers Club by Elsie Smith and me", and ask you whether or not prior to October 5 1949 anyone had ever informed you that Doris Brin or Doris Brin Walker had ever signed a statement in which she made those statements I just read to you.

A. No.

Q. I call your attention to the statement "I . . . came to the conclusion that to have introduced such a resolution into my Club did not meet my tests and was wrong.

As a member of a club remote from the maritime situation and with no special information, to have introduced the resolution was irresponsible", and ask you whether or not prior to October 5 1949 anyone had ever stated to you or called to your attention or suggested that Mrs. Walker or Doris Brin Walker had ever signed a document making that statement.

A. No.

Q. Referring to the facts stated in that document, were those among the things that you had in mind and considered when you came to a decision on Mrs. Walker's case on October 5 '49?

[fol. 533] The Witness: Will you read the question?

(Pending question read.)

A. Yes. Very much so. This was the crux, we felt, that showed a conspiracy that her reason for entering our employ was to "strengthen the Party" and that that was her sole reason.

Mr. Edises: I ask that that go out as volunteer and unresponsive and self-serving.

The Chairman: Overruled.

By Mr. Johnson:

Q. Your attention has been called, Mr. Cutter, to Company Exhibits 4, 5, 6, and 11 to 23. No. 4 is the "Labor Herald" article of August 23; No. 5 are the excerpts from the NLRB transcript of September 30, '48; No. 6 is this document of July 10, '46 you have just been testifying about; and 11 to 23 are the other documents which have been introduced here on your direct examination. Referring to all of those documents and to the facts stated in each of them, I will ask you the general question whether or not on October 5 '49 those were all things that you had in mind and were considering when you came to a determination concerning Mrs. Walker's case.

A. They were all things which we had in mind and were considering.

Q. Well, on that day, with those facts in mind and having looked at the documents, did you come to some conclusion

as to the motive or the state of mind of Mrs. Walker in filling out the application for employment with your firm?

A. We came to the conclusion that she could have had no [fol. 534] other motive than to "strengthen the Party," as she indicates here in her letter. We believed, as I stated before, that we were confronted with a conspiracy which not only was not just her idea but probably the Party's idea: that she find employment in our Company.

Mr. Edises: Now I ask that that go out as volunteered, as not responsive to any question, and as self-serving and as purely speculative.

Mr. Johnson: The answer to that, Mr. Chairman,—

The Chairman: Just a minute. Overruled. Overruled.

By Mr. Johnson:

Q. Did you—

The Chairman: It is a conclusion. If it is speculative, it is his frame of mind.

By Mr. Johnson:

Q. Did you make any decision on that day as to what action was to be taken with respect to Mrs. Walker?

A. Yes, we did.

Q. When did you come to that conclusion?

A. We came to that conclusion at the end of a rather protracted discussion, over a protracted period, when you had shown us this material. If you will remember, we were at it from the time that that grievance hearing came out until 11:00 or 12:00 o'clock that night.

Q. What decision did you come to?

A. The decision was that we had no recourse but to discharge her immediately.

Q. Was there any discussion as to the notification or [fol. 535] manner in which the discharge order was to be carried out?

A. Yes. We decided that she would be discharged, notified of discharge orally by Mr. Beckley but reading from a prepared statement so that there could be no question raised later as to what was said during that meeting.

Q. And was such a statement prepared?

A. It was.

Q. Calling your attention to Union Exhibit No. 5, which is dated October 6, 1949 and starts out "Mrs. Walker;" would you look at that?

A. Yes.

Q. Now, is that the document or a copy of the statement which was prepared for Mr. Beckley to read to Mrs. Walker?

A. It appears to be. I haven't read it line for line at this moment.

Q. Did you review that statement and approve it before it was read to her?

A. I did.

Q. I call your attention to the part of the statement here which says, referring to Union Exhibit No. 5, "We are convinced now that for a number of years you have been and still are a member of the Communist Party. We are convinced beyond any question that for a number of years you have participated actively in the Communist Party's activities. The nature of our company's business requires more than usual precaution against sabotage and subversion."

[fol. 536] The Chairman: Do you have to go into this thing piecemeal? He says that he read it, he approved it; and it was issued and it was read to her. Now, have you any special reason for going through it sentence by sentence and paragraph by paragraph after that?

Mr. Johnson: My purpose in doing it, Mr. Chairman, is that these last three paragraphs state the determination of the Company. I have eliminated all the factual information, the recitation—

Mr. Edises: Well, it is in the record.

The Chairman: Well, he says he approved it and adopted it. Now, what more do you want from him?

By Mr. Johnson:

Q. I want to find out, Mr. Cutter, whether or not at any time you ever made or approved or authorized anyone else to make any additional statement to Mrs. Walker as to the reasons or the details for her discharge.

A. No, I didn't.

Q. So that that document states all of it?

A. That's right.

Mr. Johnson: I am about to change to a new subject. Would this be a proper time for a brief recess?

The Chairman: If you wish. Mr. Conklin looks very "tired"!

(Short recess)

Mr. Johnson: Mr. Chairman, I have checked my notes here. I find that I have covered the field that I planned on direct examination.

The Chairman: All right. Cross examine.

[fol. 537] Cross-examination.

By Mr. Edises:

Q. Mr. Cutter, you testified, I believe, that during the period of the second World War your plant was subject to certain government security regulations; is that correct?

A. That's right.

Q. And did these security regulations concern themselves with such matters as whether or not certain employees should be permitted to remain at the plant or should be dismissed?

A. It did.

Q. And did you ever have occasion to dismiss an employee as a bad security risk?

A. We did not. There were several they questioned, and on further investigation didn't require their discharge.

Q. But the procedure was that if an employee was deemed to be a bad security risk, some agency of the government would inform you of that fact and request you to discharge that person?

A. During the wartime period, yes.

Q. That is the procedure?

A. That's right.

Q. Now, did there come a time when that procedure was abandoned?

A. Yes. It was abandoned, as far as I remember, immediately following the cessation of hostilities.

Q. And from that time on, the government did not intervene in such matters in your plant; is that correct?

A. The government has interested themselves from time to time.

Q. Well, just

[fol. 538] A. I don't know what you mean by "intervene."

Q. Well, let me ask you this: You testified that in 1945 the security regulations ceased to operate; is that correct?

A. That's right.

Q. Now then, has there been any change since then, since 1945, with respect to the institution of security procedures at the request of government?

A. There was a long period, a considerable period, where we heard nothing further from any government agencies. For some period now, however, the past couple of years, we have had both written and direct inquiries, that is, visits, at the plant by various security agencies of the military forces and the civilian governmental agencies.

Q. Well, apart from the question of what visits you might have had, is there any procedure under which you are now operating which requires you to act on the instructions or recommendations, of any government agency with respect to—

A. No formal procedure.

Q. That is what I am asking about. I am not asking about what you might decide to do as a voluntary matter.

A. No. It isn't a matter of what we might decide to do as a voluntary matter. We, at the initiation of various governmental agencies, have taken certain steps which they have recommended rather strongly.

Q. Is that since 1945?

A. That is since 1945.

[fol. 539] Q. Did any government agency recommend the discharge of Doris Walker?

A. No, not officially.

Q. All right. Now, the security regulations that you operated under during the war were sent you in mimeographed form along with other employers in the area, were they not?

A. Some of them.

Q. They were a precise set of instructions, they stated the

law and they stated the regulations applicable, did they not? And they also had a form telling you what procedures would be followed in these various cases; isn't that true?

A. Mr. Edises, you are getting now out of my field a little bit. That is my memory: that we had some mimeographed forms and other written letters and other direct, oral instructions.

Q. Now, you have testified that it has long been your policy not to employ any Communists; is that correct?

A. That's right.

Q. And did I understand you to state that you dated that policy from the late '30's?

A. That's right.

Q. Did you deem that to be an important policy of your Company?

A. A matter of increasing importance as time went along.

Q. Well, did you feel that it was an important policy in 1946?

A. Yes.

Q. But apparently it was not important enough for you to put it in your application form; is that correct?

[fol. 540] Mr. Johnson: That is objected to as being argumentative.

Mr. Edises: That is not argumentative. I just want to get the degree of importance they attached to it.

The Chairman: Overruled.

A. It didn't occur to us to put it in our application form, Mr. Edises. I think I have already testified the date as of which it did occur to us to put in our application form.

By Mr. Edises:

Q. Now, do you have a copy of your present application form?

A. No, I haven't. Perhaps Mr. Wagner has.

Mr. Wagner: I have none with me.

By Mr. Edises:

Q. Are you prepared to state, Mr. Cutter, that your present application form as you now use it has a question regarding Communist affiliation?

A. Yes.

Q. And when did that go into effect?

A. About a year after I requested it to go into effect.

Q. And that was when?

Mr. Johnson: March 19, 1949.

The Chairman: It appears from an exhibit here.

Mr. Johnson: Exhibit 10.

Mr. Edises: I would like to have his recollection, if he can give it to me.

A. The spring of '48.

By Mr. Edises:

Q. That is when your application blank began to ask people whether they were Communists; is that right?

[fol. 541] A. No. That is when I suggested that we have a non-Communist, non—an affidavit signed by applicants stating that they were not Communists and didn't believe in the overthrow of the government by subversive means or violence.

Q. So that you suggested that in the spring of 1948; is that right?

A. That's right.

Q. Now, when was that put into effect?

A. Sometime about a year later.

Q. Can you tell us the exact date?

A. I cannot.

Q. Can you tell us the approximate date?

A. No. I would say it was in the summer of '49.

Q. Was it after you read this Labor Herald article that you have referred to about Mrs. Walker?

A. No. It was before that, if my memory serves me.

Q. Before that. And what was the occasion for your putting that into effect at that time?

A. We had finally run out of the previous application forms and the various modifications of that application form had been made and approved and printed in the new application form.

Q. So that the thing that led you to incorporate this new clause in this application form was the fact that you ran out of the old forms; is that right?

A. No. The thing that led it to us was my listening to a speech by Almon Roth suggesting that.

[fol. 542]. Q. But that was more than a year earlier?

A. That's right.

Q. And more than a year elapsed before you finally put it in your application form. That is correct, isn't it?

A. That is correct.

Q. And that was at a time when you had used up your supply of the old forms; isn't that right?

A. I would imagine it was. Mr. Wagner's and Mr. Beckley's usual procedure was to use up their supplies.

Q. In other words, then, you didn't think the matter was so urgent that you were prepared to print new forms; you chose to wait until you had used up your old supply? Isn't that correct?

A. Are you speaking of me or the Company?

The Chairman: He is talking to you.

A. (continuing) I felt when I proposed that we put in these non-Communist affidavits, that it was important. If you were familiar with our Company you would realize that any proposal, any directive, that is put in by management at any level, anybody along the line can raise an objection and will be heard all the way through on it; and it sometimes takes an inconceivable amount of time to finally get it put into effect.

By Mr. Edises:

Q. Well, I take it, then, that you weren't particularly afraid of the possibility that Communists might come into your plant without your knowledge in the meantime; isn't that right?

Mr. Johnson: That is objected to as being argumentative.

[fol. 543] The Chairman: Overruled.

A. Believe me! we were always very much concerned with the possibility of Communists coming in.

By Mr. Edises:

Q. What were you afraid of?

A. What were we afraid of?

Q. Yes. About Communists in your plant.

A. We were afraid of anything that the Communists might do on Party orders.

Q. Well, what, for instance?

A. Sabotage.

Q. And was this a present and a lively fear on your part?

A. Yes. It is a present and lively fear at any time dealing with that type of individual and with that type of a group.

Q. Take from 1946 on. Was it?

A. It was in my book.

Q. Now, what kind of Communists in your opinion engage in this kind of activities? Newly-hired Communists or Communists who are already on your payroll?

Mr. Johnson: That is objected to, Mr. Chairman, as being highly speculative and argumentative.

Mr. Edises: I am simply trying to—

The Chairman: Just a minute, please. Had you finished your objection?

Mr. Johnson: Yes.

The Chairman: Overruled.

Read the question, please.

[fol. 544] (Pending question read.)

A. Mr. Edises, I haven't testified that the Communists engaged in activities of sabotage at our plant necessarily. I have testified to the fact that to the best of my knowledge a Communist will do any damn thing he is told to by the Party, and including you.

Mr. Edises: Now, will that be stricken from the record, and will the witness be admonished to try to maintain a certain objectivity, although I recognize that it may be difficult for him.

The Witness: It is. Very.

The Chairman: Just a moment. The last two words, "including you", are stricken.

Mr. Edises: Now, was the question ruled on, Mr. Chairman?

The Chairman: The question was answered. The words "including you" were stricken from the answer to the question. There is no question pending.

By Mr. Edises:

Q. Now, I take it that you felt, then, that there was a greater danger from newly-hired Communists than from the possibility of sabotage from Communists on your staff; is that right?

A. No, you are quite mistaken, Mr. Edises. We felt that there was a danger from any Communist on our payroll at any time who might receive orders to commit any act.

Q. But you didn't ask any of your existing employees whether they were members of the Communist Party, did you?

A. We did not.

[fol. 545] Q. As a matter of fact you never even asked Mrs. Walker that question, did you?

A. I think I have already gone into that, Mr. Edises: that it would be no use to ask a proven liar——

Q. Just answer the question.

A. No, we did not.

Q. By the way, have you ever been convicted of a crime?

A. No.

Q. Did you ever plead guilty to a crime?

A. I have never been charged with any crime.

Q. Now, when was it, Mr. Walker (sic), that this——

A. Please!

Q. Mr. Cutter. When was it that this War Labor Board award that you have referred to came down?

A. The panel award came down early in '45, I believe.

Arbitrator St. Sure: Is this the Rabbi Reichert award to which you referred?

The Witness: That is the Rabbi Reichert award. The Regional War Labor Board.

The Chairman: Sometimes they came "up".

The Witness: It was all during 1945, to the best of my recollection; the spring and summer of '45.

By Mr. Edises:

Q. Was there a decision by the National War Labor Board?

A. There was.

Q. And was this during the war?

[fol. 546] A. I believe it was. It was during the period when the National War Labor Board was in existence.

Q. And your testimony is that the War Labor Board ordered you to put into your contract a clause preventing discrimination for political belief; is that correct?

A. The good Rabbi did, and he was sustained.

Q. By the National War Labor Board?

A. As far as I— By the National War Labor Board, by the Regional War Labor Board. Whether we brought that up with the National, I don't remember.

Q. Now, do you recall whether you argued at that time that this was just a screen for Communism?

A. I believe that we argued at that time that we were against putting "political belief" in because we didn't believe in hiring any employee who believed in subversive—gaining their ends by subversive activities or violence, regardless of party affiliations.

Q. Then you did bring that argument to the attention of the War Labor Board; is that right?

A. That's right.

Q. Now, there has been some mention brought out in questioning by your own attorney about this Retail Credit Association. That was the agency that made the investigation of Mrs. Walker, was it not?

A. I believe that's been indicated.

Q. Now, do you happen to know, Mr. Cutter, whether [fol. 547] or not it is a fact that during the war this Retail Credit Association did a good deal of personnel investigation for employers in this vicinity?

A. I don't.

Arbitrator St. Sure: This refers to the 1947 investigation, as I recall.

Mr. Edises: Yes, '47.

The Witness: Pardon me. I believe the question asked about "during the war".

Mr. Johnson: Yes.

Arbitrator St. Sure: But I mean the Retail Credit Agency investigation was the early one in 1947. That is all I wanted to know.

Mr. Edises: Yes, that is right.

By the way, I would like to ask that a copy of the present application form be produced.

By Mr. Edises:

Q. Can you produce that for us, Mr. Cutter?

A. Surely.

Mr. Edises: Will you have that tomorrow?

Mr. Wagner: (Nodding affirmatively).

The Chairman: Can you ascertain also, Mr. Wagner, if you can from your records, when it was first put into use? The date.

Mr. Wagner: (Nodding affirmatively).

Mr. Edises: Do you have that statement that was read to Mrs. Walker at the time of her discharge? I don't seem to be able to lay my hands on that.

The Chairman: That is Union Exhibit 5. Here it is.

[fol. 548] By Mr. Edises:

Q. Now, Mr. Cutter, there has been some reference made, I think in the testimony and certainly in this Union Exhibit No. 5, to Mrs. Walker's union activities in the sense that the Company apparently takes the position that but for her union activities she would have been discharged earlier. I would like to ask you what the fact is in that regard. Did her union activities prevent you from taking action toward firing her sooner than you did?

A. Yes, I would say that they did. I think that had she not been a union officer and were there not the probability that charges of firing her because of union activities would be staring us in the face, with the information we had at hand as to the falsification of her work application,

we would have fired her. But we felt that if we did fire her with such information as we had at that time, owing to the fact that she was a union officer, that this same type of thing would be brought up and that there was the possibility that we might not be able to make it stand up.

Q. If she had not been a union officer, you felt back in 1947 that there were enough grounds for firing her; is that correct?

A. You are asking me, Mr. Edises, whether we would have. I believe that we would have. I am not stating that we would have. I believe that we would have on the ground that we had at that time, yes.

Q. Now, could you fix the time approximately when you had that state of mind that you have just referred to? Was that after this 1947 investigation that you have referred to or before?

[fol. 549] A. Mr. Edises, I don't believe that I testified to a state of mind at that time.

Q. Well, —

A. I believe I stated that had we had information on an employee who was not a union officer of the falsification of the work application that we had at that time, we probably would have discharged that employee.

Q. Well, that is just what I am asking you. In other words, —

A. As a matter of fact, the question arose at that time.

Q. Well, can you fix the approximate date that the question arose?

A. The question arose when we received the information on this report under discussion.

Q. That is the 1947 report on Communist activities?

A. The 1947 report on not only Communist activities but giving further information into her educational and work background.

Q. And did I understand you to say that you considered the matter at that time?

A. We did. We discussed it with our attorneys and were advised not to.

Q. And who participated in that discussion?

A. Mr. Johnson and Mr. Beckley and myself. I don't

remember whether Mr. Stanton was in on it or not. I presume that he was.

Q. And did the matter of her being a union officer enter into that discussion at that time?

A. That I don't remember. I presume that it possibly [fol. 550] did with Art and myself. Whether it did with the attorneys, I don't know.

Q. Well, was anything said—

A. May I go on then, Mr. Edises.

We have leaned over backwards throughout our history of union relationship not to take any action against any union officer if we could avoid it. Because we haven't at any time wished to lay ourselves open to the charge of belaboring a union officer because of union activities.

Q. Now, who were your attorneys at that time?

A. Mr. Johnson and Mr. Stanton.

Q. Mr. Johnson and Mr. Stanton; is that right?

A. That's right.

Q. And did you make available to Mr. Johnson and to Mr. Stanton all of the information that you had at that time?

A. We did.

Q. Did you show them the application blank?

A. Yes.

Q. I suppose the blank at that time likewise had this "John Tripp, Att'y" business on it, didn't it?

A. It did.

Q. Did you ask your attorneys at that time to make any further investigation of Mrs. Walker's Communist activities?

A. We did not. There seemed to be no point to do it.

Q. Now coming to this conference that you held with your attorneys on the 5th of October 1949. You testified, I believe, that it was at that time that you were first shown these documents and given this information that you testified [fol. 551] tied to; is that correct?

A. That's correct.

Q. And did you consider that information carefully at that time?

A. Very carefully.

Q. Did you discuss it thoroughly?

A. Very thoroughly.

Q. Did you go into that meeting with your mind already made up as to what you were going to do?

A. No, I didn't. Because I wasn't familiar with the information. I believe Mr. Beckley had had some discussions with Mr. Stanton prior to that time, but I was not familiar with the information that they had.

Q. Well, did anybody to your knowledge go into that hearing with their mind made up that they were going to fire her anyway?

A. I think Mr. Beckley was awfully close to having his mind made up.

Q. Did you discuss your testimony here with your attorney before you took the stand today?

A. Certainly.

Q. Did you discuss this particular point that I am now asking you about?

A. Not to my particular memory, no.

Q. You read over the manuscript, did you not, of Mr. Beckley's testimony?

A. Yes. Not today.

[fol. 552] Mr. Johnson: Which transcript, Mr. Edises?

Mr. Edises: The Unemployment Insurance hearing.

The Chairman: Board Exhibit No. 5.

The Witness: That's the only transcript.

Mr. Edises: Yes, Board Exhibit 5.

By Mr. Edises:

Q. You have read that, haven't you?

A. Yes.

Q. Had Mr. Beckley seen any of these documents before that day?

A. Not to my knowledge. As far as I know he had not.

Q. Had you discussed this matter with Mr. Beckley before the conference on that date?

A. Yes. Mr. Beckley was the one who wanted to set up the conference, because he was very anxious to have it and go into the material that they had.

Q. Who had the authority to fire Mrs. Walker? You or Mr. Beckley?

A. Art had the nominal authority to fire Mrs. Walker under the circumstances, but not an authority that he would exercise without my approval.

Q. You say he had the "nominal" authority?

A. He had the nominal authority.

Q. What do you mean by "nominal" authority? Could he have fired her or couldn't he?

A. He could have fired her, yes.

Q. Then he had the power?

A. He had the power, but he would not have exercised [fol. 553] that power without having discussed with me and had my approval.

Q. Did he tell you that?

A. Did he tell me that?

Q. Yes.

A. He didn't have to tell me that. There are circumstances coming up on rather frequent occasion dealing with policies or matters of considerable moment which he takes up with me before he takes action on it.

Q. Then your answer is that he didn't tell you that; is that correct?

The Witness: Will you give me the question?

The Reporter: "Question. Then your answer is that he didn't tell you that; is that correct?"

A. I would not imagine that he specifically told me that—Again I will have to get your question.

By Mr. Edises:—

Q. Did Mr. Beckley tell you that he was not going to exercise his authority to discharge Mrs. Walker at any time prior to this conference on the afternoon of October 5, 1949?

A. No. Mr. Beckley told me that there was—our attorneys had material which was of rather grave import and that he wanted to have a full discussion about it; he thought it would be necessary to fire Mrs. Walker—was to the best of my recollection the discussion.

Q. Then did you know that Mr. Beckley had made up his

mind to fire Mrs. Walker before he went into that meeting on the afternoon of October 5?

[fol. 554] A. I didn't know it as a fact, no.

Q. Do you know it now?

A. No, I don't know it as a fact now.

Q. You said that you read the transcript of the testimony at the Unemployment Insurance hearing; is that correct?

A. That's correct, Mr. Edises. But not for fear of something that you might ask me might trip me up, believe me!

Q. Well, do you remember reading this? I am reading now from—

The Chairman: Now, before you go into that let's pause for just a minute. Are you going to confront him with Beckley's testimony? I take it that that is what you are going to do.

Mr. Edises: Yes.

The Chairman: Well, aren't you just going to fall into argument if you do that? If there are any inconsistencies between his testimony and Beckley's testimony, there they sit in the record and you can certainly argue them, and the Board among other things will have to resolve those conflicts if they are going to rely on the testimony of either one of them.

Mr. Edises: Well, I want to note for the record the testimony of Mr. Beckley at page 151 of the transcript of testimony which is in evidence as Board Exhibit No. 5.

The Chairman: All right. That is fine. If you have anything else you want to note here, all right. But it seems to me you just fall into argument with him if you confront him with Beckley's testimony.

By Mr. Edises:

Q. Did you ever ask Mrs. Walker any question about any [fol. 555] of the items which are set forth in Company Exhibit 6, Company Exhibit 22, and Company Exhibit 23? Those are some of the documents which you claim were shown you by your attorney on the afternoon of October 5.

A. Company Exhibit 6 I didn't claim was shown us—

Q. Oh yes. That's right.

A. —by our attorney.

Q. That's right. The other documents were shown you.

A. Let's see. No. 6 was her letter.

Q. No. 6 is this handwritten letter.

A. Signed "Doris Brin"?

Q. Yes. You never asked her about that?

A. No.

Q. You didn't ask her about any of the facts referred to in Company Exhibit No. 22, did you?

The Chairman: Do you remember what 22 and 23 are?

The Witness: 22 and 23 are those reports.

The Chairman: Here they are.

A. No, I don't remember asking her any questions in regard to those.

By Mr. Edises:

Q. To your knowledge did any other official of your Company ever ask her any such questions?

A. Why certainly. She was asked on her application blank to give—Most of this information would have come out if she had answered her application blank honestly.

Q. You are not suggesting that there was any question on [fol. 556] that application blank about her Communist Party activities, however, are you?

A. No.

Q. When did you first learn that she had been a CIO organizer?

The Chairman: Read the question, please.

(Pending question read:)

A. That may have been in the report in 1947; I don't remember.

By Mr. Edises:

Q. Well, was it or wasn't it?

A. It wouldn't have been important to us. I don't remember.

Q. Can you refresh your recollection by looking at the report?

Mr. Johnson: No.

The Chairman: Well, you just wind up where we started from if he does that.

Mr. Edises: Well, he looked at it before.

Mr. Johnson: No.

The Witness: I assure you it would have been of no importance to us.

By Mr. Edises:

Q. Well, what is your best recollection?

A. I have already stated that I don't remember what time we had gotten that information; that it might have been in the report in 1947, but I don't remember.

Q. Well, as a matter of fact it was in the 1947 report, wasn't it, Mr. Cutter?

Mr. Johnson: I object to this, Mr. Chairman. This is an effort now to get into this document, and to do that would circumvent your previous ruling.

[fol. 557] The Chairman: Sustained.

Arbitrator Heide: Mr. Chairman, a previous witness testified that that was in the document: Mr. Wagner. It is in the record.

Arbitrator St. Sure: Well, it is in the record, then.

The Chairman: Well, if it is in, it is in.

Arbitrator Heide: I just wondered why, since it was in, there is now an objection to it going in. There was no objection previously.

Arbitrator St. Sure: The previous witness apparently testified from his memory and not from the document, and I assume that that is the distinction.

The Chairman: Yes, that is what he is doing.

By Mr. Edises:

Q. Now, Mr. Cutter, I believe that you have testified that it was the article in the August 23, 1949 edition of the Labor Herald which set off your investigation of Mrs. Walker; is that correct.

The Chairman: What exhibit number is that?

Mr. Edises: That is Company Exhibit No. 4.

The Chairman: 4.

By Mr. Edises:

Q. Now, would you look at that article, please, and tell us precisely what was new in that article which had not come to your attention or which you had not believed or suspected before.

The Chairman: Well, wait a minute. Are you talking [fol. 558] about Union Exhibit 4 or Union Exhibit 3?

The Witness: Company Exhibit 4, isn't it?

The Chairman: Company Exhibit 4. I beg your pardon.

A. Mr. Edises, the only thing that we, or I personally, was concerned with was her refusal to answer the question, "Are you a Communist?"

By Mr. Edises:

Q. Well, was that the only new element in your knowledge?

A. Let me see. Yes, it was new to us that she had presumably worked in a cannery, and I wasn't familiar with this hearing at all.

Q. At any rate you had no objection to her working in canneries as such, did you?

A. No, none whatsoever. We did have objection to her working in a cannery and not telling us about it when we asked on our application blank.

Q. But if you had known she had worked in canneries, you wouldn't have had any objection to that, would you?

A. Not if it had been on her application blank, no.

Q. All right. You have answered the question in your own way. Now, did you conclude from this article that she was a Communist?

A. No. We concluded from that article that there was apparently very good reason to make a further investigation in her case. Anyone who refuses to answer a question "Are you a Communist?" is more than open to grave suspicion.

[fol. 559] Q. In other words, —

A. There is a probability that they are and that it can be sustained.

Q. In other words, this article merely aroused suspicions on your part; is that correct?

A. No. It did far more than arouse suspicions on our part. It provoked the thought that there was information which would tell us what her status was. Remember, Mr. Edises,—

Q. Just answer my question.

A. —our suspicions had been aroused long before.

Q. Just answer my questions, Mr. Cutter. Well, yes, your suspicions had been aroused to the point where you had sent an investigating agency on her trail in 1947; isn't that true?

Mr. Johnson: That is objected to as argumentative.

The Chairman: Overruled.

A. That is your way of putting it, Mr. Edises. Our suspicions had been aroused at a prior time. We had asked an investigative agency to look into possible Communist activities.

By Mr. Edises:

Q. Well, you sent these snoopers around to neighbors and asked them to look in her mail, didn't you?

A. We didn't send anybody any place.

Mr. Johnson: Mr. Chairman, I submit that that is argumentative, and Mr. Edises persists in doing that to provoke these outbursts that happened before.

The Chairman: Well, the question has been answered. Ask the next one.

[fol. 560]. Mr. Edises: You just don't like the terminology, that's all.

By Mr. Edises:

Q. Now, you answered in response to a question of your counsel that you had not known of her prior marriage to somebody named Marasse. Do I take it that there is an objection on your part to her marriage?

A. None whatsoever.

Q. How much time was spent in this discussion with your attorneys on the afternoon of October 5?

A. That discussion lasted from the time the grievance

hearing broke up, I would say probably around 9:00 o'clock in the morning, until 11:00 or 12:00 that night.

Q. And how much of that was spent in drafting this document that you read to her when you fired her?

A. I wasn't present when the drafting of the document in its preliminary stages was done. I read the final draft. And from the time I was absent, I would say probably an hour.

Q. Who made the original draft?

A. That was in collaboration between Mr. Beckley and our attorneys.

Q. What was your reason for drafting this statement rather than telling her that she was fired?

A. So that there could be no misinterpretation or misrepresentation or misstatements made as to exactly what transpired at that interview which took place the following morning.

Q. Now, whose idea was it to put in this statement these [fol. 561] facts pertaining to her alleged Communist activities?

A. I don't know. I wasn't present.

Mr. Johnson: That's—

The Witness: Pardon me.

Mr. Johnson: I was merely going to object on the ground that Mr. Cutter stated that he wasn't there. But it is covered.

The Chairman: It is in.

By Mr. Edises:

Q. Were you present when the decision was made to set out the facts pertaining to her alleged Communist activities?

A. I was.

Q. What was the discussion?

A. The discussion was that in view of the nature of the charges, in view of the character of the individual involved, it would be best to make an oral presentation to her, read from a written statement so that there could be no misrepresentation or misunderstanding.

Q. Well, what was said about setting out these facts or

alleged facts about her Communist affiliations and activities?

A. Again, at the actual statement and its preparation I was not present. I would be very happy to tell you if I had been present.

Q. Didn't you participate in the decision as to what the general form of the statement was to be?

A. No, I didn't.

Q. You stated in response to your counsel's questions [fol. 562] that you became convinced after this patient and exhaustive examination of the data that your counsel furnished you that her purpose all along had been to "strengthen the Party" in her work. What other evidence did you have of any such purpose, apart from the quotation which you claim your counsel read you at that time?

A. We had the evidence that a Dr. Berke, who is tied up with the Communist Party, and a couple of McTernans, who appear to be tied up with the Communist Party, —

Mr. Edises: Just a minute. You misunderstood my question.

Mr. Johnson: I don't think he did.

The Witness: No, I didn't misunderstand your question at all. Let me answer your question.

Mr. Edises: You just wait a minute and I will reframe the question.

The Witness: I am answering your question. May I continue?

The Chairman: Just a moment. Just a moment. Just a moment.

Do you want to withdraw the question?

Mr. Edises: Yes.

The Chairman: All right. You may. Now frame another one.

By Mr. Edises:

Q. What evidence in the course of her employment with Cutter did you have of any activity which you regarded as "strengthening the Party" in her work at Cutter?

A. We had no evidence of her "strengthening the Party" in her work at Cutter.

Q. Or her activities at Cutter?

A. Or her activities at Cutter. I think I have previously [fol. 563] pointed out, Mr. Edises, that what we were afraid of was not work that would be done without Party orders but what the Party orders might be and when.

Q. Now, what weight did you give to the information contained in the Un-American Activities reports, the Tenney Committee reports?

A. Just as indicative.

Q. Well, when your counsel showed you those, did you accept the information which he presented to you as fact?

A. We accepted it as a fact that it was in the reports, yes.

Q. How much weight did you give to it?

A. Very considerable weight.

Q. In other words, you assumed that if the Un-American Activities Committee—what do they call it? Joint Fact-Finding Committee—said something or listed someone in one of these reports, that was information to be relied on; is that correct?

A. That that was information which was indicative. We were very much interested in their reports on John Tripp McTernan or John T. McTernan, I believe it is there, and on Dr. Berke, who were included in one way or another in her application.

Q. Did counsel show you this 1948 report?

A. Yes. He showed us all of those reports.

Q. Did you examine it?

A. I examined the items that he called to my attention.

Q. Did he point out to you that the name of Mr. Paul St. Sure is listed in this 1948 report?

[fol. 564] A. No. That was news to me.

Q. When did you learn about that?

A. I am beginning to view him with suspicion! He told me tonight.

Arbitrator St. Sure: Sensation!

By Mr. Edises:

Q. Did he tell you that Robert Sproul of the University of California was listed in the 1945 report?

A. Yes.

Q. Did he tell you about some other names of that kind?

A. No. I remember Sproul himself.

Q. Are you listed in any of these reports?

A. I wouldn't be surprised. I subscribed to the "Current Affairs" for a while.

Mr. Johnson: "Political Affairs."

The Witness: "Political Affairs." That's right.

By Mr. Edises:

Q. What is that?

A. As I understand it, that's the monthly bible of the Communist Party.

Mr. Johnson: It is referred to in there.

The Witness: It is a little bit involved for me. I will have to admit that I didn't read it very hard very long.

Mr. Edises: You had certainly better check these reports, Mr. Cutter.

Mr. Johnson: "Political Affairs" is referred to in there, Mr. Edises.

The Witness: According to "Counterattack" it is the [fol. 565] bible—the monthly bible.

Mr. Burke: What is "Counterattack"?

The Chairman: Just a minute. Let's have the next question, please.

By Mr. Edises:

Q. Did the number of times that a person was listed in that report enter into your judgment as to how much weight to give it?

A. Not necessarily, Mr. Edises, but the statements as to why he was included in that report and what his activities had been would give it weight in my mind.

Mr. Edises: I believe that is all.

The Chairman: Any redirect?

Redirect examination.

By Mr. Johnson:

Q. Mr. Cutter, you stated that when you came to this meeting on October 5, 1949 you had not been shown or had

explained to you the various documents that your attorneys had gathered together after your instructions to check into that report of August 23.

A. That's correct.

Q. So that when you came to the meeting, as you testified, you had not made up your mind on the question of what was to be done with Mrs. Walker?

A. That is correct.

Q. Now, you said that Mr. Beckley asked for the meeting; is that correct?

[fol. 566] A. That's right.

Q. And did he state to you that there were certain documents that he thought ought to be gone over and considered?

A. That's right.

Q. And was it suggested that you come to that meeting so that you might personally participate in the decision on the Walker case?

Mr. Edises: I object to that as leading and suggestive.

The Chairman: You are leading.

Mr. Johnson: I think that is right.

By Mr. Johnson:

Q. What did Mr. Beckley say to you?

A. That you had completed your inquiry and wanted to present the material to us and that it looked very serious.

Q. Anything further?

A. He felt that on the basis of the information that he had gotten from Mr. Stanton, it probably would be necessary to discharge Mrs. Walker.

Q. What did you say?

A. I said "Let's take a look at it".

Q. Any further discussion at that time?

A. No.

Q. When was that?

A. It was over the phone, as I remember, a week or ten days before the actual discussion took place.

Q. And did you have any further discussion with Mr. Beckley about the matter prior to the conference on the 5th?

[fol. 567] A. No.

Q. So that you were not given any summary or any oral statements as to what was in these documents prior to the time you came to the meeting?

A. Gardiner, he may have referred to them briefly as to what knowledge he had had from Mr. Stanton, but it wasn't to any extent and I don't remember.

Q. When you refer to "he" you mean Mr. Beckley?

A. Mr. Beckley, yes.

Q. You hadn't talked to Mr. Stanton personally about the documents prior to the meeting?

A. No, I had not.

Mr. Johnson: That's all.

The Chairman: Do you have any questions, Mr. St. Sure?

Arbitrator St. Sure: I have none.

The Chairman: Do you have any?

Arbitrator Heide: Yes. I would like to ask a question.

This first report you got in 1947 from this Retail Credit Association disclosed the fact that apparently Mrs. Walker had not given all the information that was required or had falsified information on her application blank; is that correct?

The Witness: That she had left out certain information, yes.

Arbitrator Heide: And at that time you were fully aware of that fact?

The Witness: That's right.

[fols. 568-571] Arbitrator Heide: And why didn't you take action against Mrs. Walker at that time for falsification of records?

The Witness: I think that's all in the record, Mr. Heide; the fact that we discussed, as a matter of fact, took it up with our attorneys, and our attorneys felt that there was not adequate information on which to move there; that on the basis of the information there we would probably not be sustained on the discharge if we should discharge her.

Arbitrator Heide: Then that information alone you would not have discharged Mrs. Walker, let us say if it had come in to your possession in 1949 and that alone?

The Witness: No.

Arbitrator Heide: That's all.
The Chairman: Thank you.

[fol. 572] Fifth Day

San Francisco, California

August 3 1950

(The hearing was resumed, pursuant to adjournment, at 10:10 A.M.)

Mr. Johnson: Ready, Mr. Chairman?

Mr. Chairman, at the conclusion of the hearing last evening you asked that we bring over and make available some of the application for employment forms—the latest form. I have those documents here. I don't know how you want to handle this, but I have a copy for each of you. And I am authorized to state that this type of form was put into use first in June of 1949.

Referring to the question that has been raised concerning the form with respect to the Communist issue, I call your attention to the reverse side of the application, right underneath the figure "5", reading as follows:

"Are you a member, or have you ever been a member of the Communist Party or had any connection with organizations listed by the U. S. Department of Justice as a Communist 'front'?"

Do you want to mark that as an exhibit?

The Chairman: Well, Mr. Edises called for it.

Do you want to offer it?

Mr. Edises: No, I don't want to offer it.

Mr. Johnson: Well, I guess we had better offer it, then.

The Chairman: Board Exhibit 6.

(Copy of Application for Employment, Cutter Labora-
[fol. 573] tories, introduced in June of 1949, was received in evidence and marked Board Exhibit No. 6.)

Mr. Edises: The testimony was to the effect that there was an affidavit required. That is what I wanted to see.

Mr. Johnson: No, you misunderstood.

Mr. Edises: Those were the words.

Mr. Johnson: You misunderstood, Mr. Edises: Mr. Cutter said that he personally proposed that the—Company's Exhibit No. 10 explains that.

The Chairman: Well, let's not fall into argument about it. The record will speak for itself.

Mr. Johnson: That's right.

Now, at this time we will call Mrs. Walker. And I don't suppose it is necessary, in view of what you have indicated before, to state that we desire to call her under Section 2055 of the Code of Civil Procedure; in the absence of the enforcement of that, as an adverse and a hostile witness.

The Chairman: You can cross examine her.

DORIS B. WALKER, called as an adverse witness on behalf of the Company, having been previously duly sworn, was further examined and testified as follows:

Direct examination.

By Mr. Johnson:

Q. Mrs. Walker, when did you say that you first went to work for the Office of Price Administration?

[fol. 574] A. It was early in June 1942.

Q. In other words, that was shortly after you were admitted to The Bar?

A. No, it was before I was admitted to The Bar. It was shortly after I was graduated from law school.

Q. That's right. Now, when you went to work there, what was your first position?

A. Well, that's a little difficult to define because my classification was a clerical classification, since I had not yet been admitted to practice; but the job I performed was essentially that of an enforcement attorney.

Q. From June 1942 on?

A. Yes.

Q. And then you were subsequently employed or transferred into the actual formal classification of Enforcement Attorney?

A. That's correct.

Q. And when was that done?

A. Very shortly after I was admitted to practice.

Q. And that would have been——

A. In December of 1942.

Q. Isn't it a fact that your employment as enforcement attorney commenced on June 3 1943?

A. Not as I recall, Mr. Johnson, no.

Q. You don't recall that?

A. No. I'm quite sure it did not as a matter of fact.

Q. When you got the appointment as enforcement attorney [fol. 575] your salary was increased to \$3200 a year, wasn't it?

A. No. In the Civil Service there are a number of grades. After I was admitted to practice I was classified as a professional. The lowest grade of professional is P-1. That was my classification. I was promoted from time to time to higher grades in the professional classification. Now, my recollection is that the \$3200 figure was the salary for the P-3 job. It may have been a P-4. I don't recall exactly. But I think it was a P-3.

Q. During your employment at the Office of Price Administration did you on June 3 1943 sign an affidavit or oath stating that you were not a member of the Communist Party or any other political party or organization which advocated the overthrow of our constitutional form of government in the United States?

Mr. Edises: Just a moment. I will object to that on all of the grounds previously stated, including the fact that no reference was ever made to any such matter prior to her discharge. And if the Board is going to rule otherwise than it did when such questions were previously asked, then I wish to consult with Mrs. Walker before she answers.

The Chairman: Well, do you want to consult now?

Mr. Edises: I would like to know whether the Board is going to rule as it did previously.

The Chairman: It seems to me this is essentially the same problem that was presented by Company Exhibit No. 6.

Mr. Johnson: I don't think that the direct question of whether or not a person signed an affidavit can come

[fol. 576] under any pretense of a claim that she should not be required to answer it. I am not asking her about the contents. I am not asking her at this time what the atmosphere was when she signed it. I am asking her the direct and simple question, Did you sign an affidavit?

The Chairman: That was the same question that was directed to the witness in connection with Company Exhibit No. 6.

Mr. Johnson: That is right. I made the same point at that time.

The Chairman: We make the same ruling.

Mr. Johnson: Has the witness indicated whether she is going to answer the question?

Mr. Edises: Our position is the same as it was.

The Chairman: And the position then was that the witness refused to answer.

The Witness: The same answer.

By Mr. Johnson:

Q. Isn't it a fact, Mrs. Walker, that on June 3 1943, while you were employed at the Office of Price Administration, you signed and filed an affidavit required by Section 9(a) of the Statute of August 2 1939 which states "It shall be unlawful for any person employed in any capacity by any agency of the Federal government whose compensation or any part thereof is paid from funds authorized or appropriated by any act of Congress to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States"?

Mr. Edises: The same objection.

[fol. 577] The Chairman: The same ruling.

The same answer from the witness?

The Witness: The same answer.

By Mr. Johnson:

Q. Isn't it true, Mrs. Walker, that on or about June 3 1943 Mr. John T. McTernan, your superior at the Office of Price Administration, presented you such an affidavit and told you that under the Statute to which I have

referred and the rules of the Office of Price Administration it was necessary that you sign that affidavit?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The same answer?

The Witness: The same answer.

Mr. Johnson: In view of that position, Mr. Chairman, I am informed that we shall have a photostatic copy of that affidavit here, maybe today, maybe tomorrow, and I would request at this time in view of the nature of the witness's answers that we be allowed an opportunity to make that presentation, even though I might terminate my examination prior to its arrival.

The Chairman: You will have that right.

By Mr. Johnson:

Q. Calling your attention, Mrs. Walker, to a document which is in evidence here as Company Exhibit No. 23, let me ask you this question: Did you on February 9 1946 fill out a Communist Party interview card or otherwise furnish information or make the statement that you had joined the Communist Party in June 1942?

[fol. 578] Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. On that date, Mrs. Walker, did you list or write in or furnish any information on a Communist Party interview card?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Mrs. Walker, is it a fact that 1945 Communist Party membership card #49360 was issued to you either under the name of Doris Brin or Doris Brin Marasse?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Mrs. Walker, is it a fact that you have held the positions of Organizer or Assistant Organizer or Membership Director or Educational Director of various Communist Party clubs and sections?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

Mr. Johnson: I might state, Mr. Chairman, in support of these questions that Mr. Edises objected strenuously during Mr. Cutter's examination because of the fact that they had not asked her these questions. I am asking [fol. 579] them now in an effort to remedy that defect, if there were one, and also to elicit what the answers would have been.

Mr. Edises: You are a little late.

The Chairman: Just a moment.

Next question, please.

By Mr. Johnson:

Q. Mrs. Walker, is it a fact that you attended the Cercon class of the State School of the Communist Party in 1945?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Mrs. Walker, is it a fact that you gave up the practice of the law because it was "frustrating" to work with the people with whom you had to work, namely, professional people?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

Mr. Johnson: That is not relative to that issue at all.

Arbitrator St. Sure: She already answered that question once.

Arbitrator Heide: That is already in the record.

Mr. Edises: Well, it is all in the evidence: the reason why she gave it up.

The Witness: That is not my statement.

The Chairman: Next question.

[fol. 580] By Mr. Johnson:

Q. Isn't it a fact that one of the reasons you gave up the practice of the law was because there was little similarity between them, that is, the professional people with whom you had to work, and their activities and the class struggle?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Is it a fact, Mrs. Walker, that on January 24, 1946 you filed an application to attend the State School of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Mrs. Walker, on January 24, 1946 did you state that you were a member of the Sunset Branch of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. I am going to call your attention to Company Exhibit No. 22—

The Chairman: Do you think that we could shorten this a little bit? Are you going through that sentence by sentence the same way?

Mr. Johnson: No. I will state, though, Mr. Chairman, that in my opinion, in view of the situation with which I am [fol. 581] confronted, there is no other way that I could handle a document such as Exhibit 23. But this will be short.

By Mr. Johnson:

Q. Calling your attention to Company Exhibit No. 22, is it a fact that you were at one time a member of and an organizer for the Cannery Club of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Were you at any time a member of or an organizer for the Cannery Workers Club of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Calling your attention to Company Exhibit No. 6, is that your signature?

Mr. Edises: That is objected to on all of the previous grounds previously stated and the additional ground that it has already been asked and answered.

The Chairman: The same ruling as before.

Mr. Johnson: It is now in evidence, Mr. Chairman.

The Chairman: I understand.

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Mrs. Walker, did you ever write any letter or document referring to "Lloyd"?

[fol. 582] Mr. Edises: Just a moment. I think that counsel should be instructed not to go through that same routine,

because he has already asked those questions about No. 6, if my recollection serves me.

The Chairman: I'm not too sure.

Arbitrator St. Sure: Nothing but the signature has been inquired about so far, according to my recollection.

Mr. Edises: He went down the whole thing.

Mr. Johnson: I did run through a series of questions, but I have some additional information and we are at a different state of the record. I submit that this is the very vital issue and the heart of the case on this whole Communist issue, and a reasonable amount of liberality should be exercised in view of the unusual circumstances presented.

Mr. Edises: We will object on the ground that it has already been gone into; already asked and answered.

The Chairman: I don't recall. I don't recall. I have a hazy recollection that you went into portions of that document.

Mr. Johnson: I don't want to misrepresent—

The Chairman: Has anybody got the record here?

Mr. Johnson: I had a typewritten list and I asked this specific question, but I have certain information that is preliminary to it.

The Chairman: Are you going to ask different questions than the questions you asked before?

Mr. Johnson: They will be different.

Mr. Edises: Let's get the pages, Mr. Johnson.
[Vol. 583] And if the Chairman will look at the transcript, I think he will find that the matter has been gone into.

Mr. Johnson: I said that.

I will give you the page references, Mr. Edises. I can help you.

At pages 178-181.

I find, Mr. Chairman, in checking these pages that while I had listed that question on the list that I had at the time, in complying with your suggestion that I had better speed along, I didn't ask the question.

The Chairman: Go ahead now. I see that there were a lot of questions asked about the contents of that document.

Mr. Johnson: That is right.

A question is pending.

The Chairman: Read the question, please.

(Question read.)

The Chairman: I don't see that that question was asked.

Mr. Edises: Well, we will make the same—

Mr. Johnson: It was not.

Mr. Edises: —objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Mrs. Walker, did you ever write and sign any document in which you made reference to "Carroll"?

Mr. Edises: The same objection.

The Chairman: The same ruling.

[fol. 584] The Witness: The same answer.

By Mr. Johnson:

Q. Mrs. Walker, is it a fact that the Report of the Un-American Activities Committee of the State Legislature for 1948, at page 215, was correct when it stated: "Communist functionaries in Alameda County include Lloyd Lehmann and Carroll Barnes"?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Isn't it true that you wrote and signed a document on July 10, 1946 using the terms "Lloyd" and "Carroll," and that in so doing you were referring to two Communist functionaries in Alameda County named Lloyd Lehmann and Carroll Barnes?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Did you ever write and sign any document referring to "Elsie Smith"?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Isn't it a fact that you did write such a document and sign it on July 10, 1946, and that in referring to "Elsie Smith" you were referring to a member of the Communist Party and also a member of the Cannery Workers Club of the Communist Party named Elsie Smith?

[fol. 585] Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Mrs. Walker, on November 11, 1949 did you appear and speak at a meeting at the John Muir School in Berkeley at which Richard Gladstein, one of the six attorneys defending the eleven Communist Party leaders, spoke under the auspices of the Civil Rights Congress?

Mr. Edises: Is that before or after— What was that date? November 11?

Mr. Johnson: November 11, 1949, yes.

Mr. Edises: That is objected to on the ground of irrelevancy; a matter that occurred after the date of her discharge.

Mr. Johnson: May I present my position on that, Mr. Chairman?

The Chairman: Yes.

Mr. Johnson: It is this: that this subject goes directly to the question of the state of mind and the motive of this woman. She has testified that the reasons that she made admitted concealments was because she needed a job, and other such statements. The Company on the other hand contends that in view of the facts that were discovered in 1949, approximately a month before this meeting to which I am referring, they knew and took the position and believed that she was a Communist Party member and that her entire course of conduct had been generated and directed and motivated because of that membership and activity.

[fol. 586] My purpose in presenting this is to show that not only at the time but continuously since this woman has participated actively in the meetings and the movements and the activities of the Communist Party; has gone to meetings where known and admitted Communists have participated actively; and in that way to develop her frame of mind and to show that she has been a member of the Communist Party.

And I submit that in the case of *United States v. Marzani*, reported in 71 Federal Supplement 615, the court there expressly held that where the United States government or any other party raises the issue of Communist Party membership, for the purpose of showing it you are entitled to go generally and unrestrictedly into the question of meetings attended, the nature of the pamphlets which are distributed, and those other questions which normally go along with Party membership.

The Chairman: But when?

Mr. Johnson: I submit, at any time. Just as they are doing in the Bridges case, to show that a continued course of conduct indicates the state of mind of the person. And I submit that where—

The Chairman: You say "the Bridges case". You mean the current application to revoke bail?

Mr. Johnson: That is right.

The Chairman: I don't see that that is germane here. The ultimate issue here is whether a discharge that occurred in October of 1949 is valid or not. I am not particularly [fol. 587] interested in anything that happened after that or what anybody, the Company or Mrs. Walker or anybody else, did after that. It seems to me that we are going to get far afield if we beat the bushes up after October 5.

I will sustain the objection on that ground.

Mr. Johnson: At this time, Mr. Chairman, we offer to prove that on November 11, 1949, Mrs. Doris Walker, the Petitioner here, attended a meeting and spoke at the John Muir School in Berkeley, along with Mr. Richard Gladstein, an attorney, one of the six attorneys who defended the eleven Communist Party leaders in the trial in New York, who was speaking in behalf of his appeal from a six-months' contempt conviction; that the meeting attended by and par-

ticipated in by both Mr. Gladstein and Mrs. Walker was sponsored by the Civil Rights Congress.

We offer also to submit proof as to the status and nature of the Civil Rights Congress.

In support of our offer of proof we are prepared to present an article in the Daily People's World for November 11, 1949, third page, column 2, referring to the meeting.

By Mr. Johnson:

Q. Mrs. Walker, on July 4, 1950, at the Lakeside Park in Oakland, did you participate in circularizing among the people who were attending the patriotic celebration at that Park so-called "peace petitions"?

Mr. Edises: That is objected to as irrelevant. It is a matter occurring after the discharge.

The Chairman: The same ruling. Sustained.

[fol. 588] By Mr. Johnson:

Q. On that day, Mrs. Walker, did you present such a petition and request a signature from an employee of Cutter Laboratories by the name of Don Wonder?

Mr. Edises: The same objection.

The Chairman: The same ruling.

By Mr. Johnson:

Q. On that day, Mrs. Walker, isn't it true that you presented such a petition to Mr. Wonder and upon his recognizing you he stated to you "Hello, Doris. What is the 'Party line' today?"

Mr. Edises: The same objection.

The Chairman: The same ruling.

Mr. Johnson: That is all.

Mr. Edises: No questions.

The Chairman: Thank you.

(Witness excused)

Mr. Johnson: At this time, Mr. Chairman, we would like to make a motion with respect to certain questions. I will say that this completes our case and I now desire to make a motion.

Turning back to page 123 of the record, at which point it will be noted that on line 22 the witness stated that she did not desire to answer the question, which was the original one concerning her Communist Party membership, the question having been on page 121: "Mrs. Walker, are you now or have you ever been a member of the Communist Party?" At this time we request that the witness be instructed to answer that question.

The Chairman: All right. The request is taken under [fol. 589] submission.

Mr. Johnson: Calling your attention now to page 169 of the record,—

Mr. Edises: What page was that?

Mr. Johnson: 169.

I call your attention to the fact that on page 166, at line 11, I asked her the question: "Is that your signature on this document?" And I will add, parenthetically that a reading of these pages will show that that is the document now in evidence as Company Exhibit 6.

At page 169 appears the Chairman's statement, at line 10: "The same objection will be deemed to have been made, the same ruling and the same statement." And the witness says: "The same answer."

We would move at this time that Mrs. Walker be instructed by the Chairman to answer that question.

The Chairman: That motion is submitted.

Mr. Johnson: I call your attention to page 127 of the record, at which page, on line 13, Mrs. Walker was asked this question: "Mrs. Walker, are you now or have you ever been a member of the Federal Workers Branch in the Professional Section of the Communist Party?" The same question was asked again on page 129 at line 9.

Mr. Edises said: "The same objection." The Chairman stated: "The same ruling," and stated to the witness "I presume that she will give the same reason for her refusal [fol. 590] to answer," and she said: "That's correct."

I will ask that that question and the next one on page 129, which says "Are you now or have you ever been a member of the Professional Section of the Communist Party?"; the next one, which says "Are you now or have you ever been a member of the South Side Club of the Professional Sec-

tion of the Communist Party?" on page 130; the next one, which says "Were you ever either nominated, appointed or elected to be Membership Director of the Professional Section of the Communist Party?" that those questions and the other questions which appear on pages 130 through 137 of the record—there is a series of them there—

The Chairman: You don't have to read them.

Mr. Johnson:—as to all of which the same objection, the same instruction or statement from the Board, and the same answer from the witness were given, we would move at this time that Mrs. Walker be ordered by the Chairman to answer each one of those questions.

The Chairman: That motion is submitted.

Mr. Johnson: Then I call your attention to pages 178-181 of the record, at which point the witness was asked a series of questions concerning the document which is now in evidence as Company Exhibit 6, starting with the question: "Now, Mrs. Walker, did you ever write and sign any communication in which you referred to 'strengthening the Party,'" (Capital "P" on "Party"). I would ask that as to the series of questions and all of them beginning there and running down through page 181, as to which the same [fol. 591] objection, the same statement, the same ruling and the same answer were given, that Mrs. Walker now be instructed by the Chairman to answer them.

The Chairman: Submitted.

Mr. Johnson: We would make the same request with respect to the series of questions propounded to her today concerning Company Exhibits 6, 22 and 23, as to each of which the same objection, the same statement, the same ruling, and the same answer were given. We would ask that Mrs. Walker now be instructed to answer each and all of them.

The Chairman: Submitted.

Mr. Johnson: In view of the state of the record, Mr. Chairman, and confronted with the situation where this witness who moved for, requested and petitioned for this arbitration has now on her own motion and on advice of counsel refused to answer vital questions as to which affirmative documents are now in the record, so that there isn't any question of somebody just baiting her, and asking her

questions without some prima facie showing, we move at this time that all of her testimony be stricken from the record.

And I will say to you in making the motion that the same motion was made before the National Labor Relations Board upon her refusal to answer the Communist question, without any presentation at all of details or affirmative evidence; that upon the motion being made, it was granted.

The Chairman: Submitted.

[fol. 592] Mr. Johnson: I have two requests I would like to make.

In the first place, in view of the refusal of this witness to answer the question about the affidavit that she filed with the Office of Price Administration, I do have and state to you that we have information that a copy of that will be forthcoming shortly. If it is here by tomorrow or by the time of the argument I would ask leave to present it at that time without argument. If it is not here, I would ask a reasonable continuance for the purpose of having it in the record. I consider it to be a vital and essential document.

Mr. Edises: We don't consider it vital.

Mr. Johnson: I didn't think so.

Mr. Edises: Or material—

The Chairman: Let's not—

Mr. Edises: But we will not make any objection to its being submitted even after the arbitration is closed.

The Chairman: Well, I will tell you what you can do. We are talking about contingencies here, but if you can't secure it before we conclude here and adjourn, show it to Mr. Edises and furnish the Reporter with a copy of it.

Mr. Johnson: Yes. And I want to make another request concerning that document.

If we are unable to get it through our own resources and channels, I am going to make a request for the issuance of a subpoena for presentation to governmental agencies in order that it might be obtained.

[fol. 593] Mr. Edises: We will oppose that request.

The Chairman: If you find yourself in that situation after we have adjourned, prepare a subpoena and forward it to me.

Mr. Johnson: One further—

The Chairman: Give a copy of the subpoena to Mr. Edises.

Mr. Johnson: This is a suggestion, Mr. Chairman:

In view of the state of this record, with this witness refusing to answer the question as to whether or not the signature on Company Exhibit 6 is in fact her signature; in view of the fact that the document is in evidence and has been referred to by the Company, it would seem to me that the issue of whether or not that is a genuine document is an essential issue. I have refrained from making this suggestion until we knew to the full extent the state of Mrs. Walker's mind and attitude. It now being plain, I would suggest a continuance and state that the Company is willing to obtain a handwriting expert. In fact, we will consent to the appointment by the panel of any handwriting expert that they might suggest or recommend in order that we might present expert testimony as to whether or not the signature on that document is in fact the signature of Mrs. Walker.

Mr. Edises: We will oppose that request.

The Chairman: Well, you are in control of the presentation of your own case.

Mr. Johnson: I would request a continuance, then, for the purpose of obtaining such testimony.

Mr. Edises: Well, we will oppose that. The issue is not [fol. 594] whether that is in her handwriting or not. The issue is, On what basis did the Company act when it discharged her? The Company was perfectly willing to go along on the basis of not even that statement but of counsel's alleged statement as to what was in that document. And if the Company didn't feel the necessity of either asking the witness whether it was her signature or getting a handwriting expert at that time, and were perfectly willing to go to the extreme length of discharging Mrs. Walker without going into that question, we see no reason why they should be permitted to do it now.

The Chairman: Let's take a brief recess. I would like to talk to the two Board members.

(Short recess to permit of executive session.)

The Chairman: The motion for a continuance for the purpose indicated is denied, Mr. Heide concurring with the Chairman.

Mr. Johnson: In other words, the continuance for the purpose of getting the handwriting expert.

Mr. Chairman, in checking my notes here I find that I apparently overlooked asking one or two questions. May I recall Mrs. Walker very briefly?

Mr. Edises: You can ask them right from there.

The Chairman: No, no. Let's have the witness come up here.

DORIS B. WALKER, recalled as an adverse witness on behalf of the Company, having been previously duly sworn by the Reporter-Notary, was further examined and testified [fol. 595] as follows:

• Direct examination.

By Mr. Johnson:

Q. Mrs. Walker; I call your attention to the fact that in answer to a question by Mr. Edises about—Well, maybe you would like to look at page 23 of the transcript in this case, at the bottom of the page, line 20, and the answer.

A. (Reading portion of transcript referred to.)

Q. Mr. Edises had asked you at line 15 "What was the next job you held?" Your answer was "I was employed as an attorney by the law firm of Gladstein, Grossman, Sawyer & Edises." The next question: "How long did you remain at that job?" Answer: "Until January of 1946."

This is the question to which I direct your attention: "And can you state what led you to leave that job?" To which your answer was: "Yes. I had originally gone to law school because I was interested in becoming a labor lawyer. I was interested in the labor movement. And after I worked for a labor law firm for a period of time, I found that I was not involved in labor cases as such; that my time was spent on routine civil matters, divorcees, adoptions, personal-injury cases and the like; and I became dissatis-

fied with my work and felt that I would rather take a more active role in the field in which I was interested. And so I quit in order to take a job in a plant."

My question is, What was the field that you were "interested in" in which you "felt that (you) would rather take a more active role"?

[fol. 596] A. The organized labor movement.

Q. The organized labor movement. Did you have any other reason for leaving that job and taking a job in the field in which you were interested?

A. No.

Q. Isn't it a fact, Mrs. Walker, that the reason you left that job and the reason you took a job in the field where you could take a "more active role" was because of the fact that you were a member of the Communist Party and you felt that by taking a plant or field job you could better carry on your activities as a member of the Communist Party?

Mr. Edises: Now, Mr. Chairman, I believe that the counsel here by somewhat devious method is attempting to get into the field that has already been barred by your ruling.

The Chairman: The same objection?

Mr. Edises: So I make the same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. I call your attention to page 24 of that transcript, line 15.

The Chairman: Excuse me just a minute.

Mr. Johnson: The question has been asked as to the gentleman who came in. This is Mr. Don Wonder, an employee of Cutter Laboratories, who I asked be present this morning.

By Mr. Johnson:

Q. Calling your attention at page 24, line 15, Mr. Edises had asked you about your employment at the Heinz Can- [fol. 597] nery, and then he said: "Can you state the

circumstances of your layoff?" Your answer was: "It requires going into some of the reasons why I was at H. J. Heinz in the first place." His Statement was: "All right. Go ahead and tell me." And your answer was, page 24, line 19: "Well, at the time that I went to work at Heinz the CIO Cannery Workers Union, known as the Food, Tobacco and Agricultural Workers Union, was conducting an organizing drive among the canneries in Northern California, and I felt that this would be an opportunity for me to take an active role in the organized labor movement. And so I got a job there in order to help organize the CIO on the job. And after I had been there for about three weeks I began to sign up workers on the job in the CIO union, and after a few days I was observed doing so by my forelady and the following day I was laid off."

Do you remember being asked that question and giving that answer?

A. Yes.

Q. Now, Mrs. Walker, was there any other reason why you took that job at the Heinz plant?

A. No.

Q. Isn't it a fact, Mrs. Walker, that the real reason that you took that job was because you were a member of the Communist Party at the time and that you felt and believed that by taking that job it would afford you an opportunity to take an active role in the activities and program of the Communist Party?

Mr. Edises: The same objection.
[fol. 598] The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. I call your attention to page 27 of the transcript, line 23. Mr. Edises had asked you, "What was your next job?" Your answer was: "Cutter Laboratories in Berkeley".

A. What page?

The Chairman: 27.

By Mr. Johnson:

Q. 27.

A. I see. I see.

Q. Then he asked you this question: "Can you state what led you to seek employment at Cutter Laboratories"? Your answer was: "Well, I needed a job very badly and I also knew that there was a CIO union in the plant and that Cutter Laboratories would be a place where I could be active as a trade unionist."

Do you remember being asked that question and giving that answer?

A. Yes.

Q. Now, Mrs. Walker, was there any other reason or any other motive or was there anything else in your mind which led you to seek employment at Cutter Laboratories?

A. No.

Q. Isn't it a fact, Mrs. Walker, that at that time you were a member of the Communist Party and that the reason why you sought employment and filled out an application for employment at Cutter Laboratories was because you felt and believed, and had it in mind, that by obtaining that employment at that plant you could [fol. 599] more actively and more effectively carry on the program and the activities of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. I call your attention to page 31 of the transcript, line 23. You will note that Mr. Edises had asked you the question: "Is there any item with reference to your education which you omitted from that statement?" which was the Cutter Laboratories application for employment form. Your answer was: "My law school education was omitted."

Were you then asked this question and did you give this answer: "Question. And will you tell the Board what led you to omit that statement?" Answer: "Well, I felt sure that I would not be hired for any clerical job

at Cutter Lab. for which I was applying if the Company knew that I had received a law school education. They would consider me in a sense over-educated for any such job and therefore wouldn't hire me."?

Were you asked that question and did you give that answer.

A. Yes.

Q. Now, Mrs. Walker, was there any other reason or motive, or did you have anything else in mind?

Mr. Edises: Just a moment. Who is this gentleman?

Mr. Johnson: That is the maitre d' in the hotel. He has an important question to ask.

By Mr. Johnson:

Q. Will you tell me, Mrs. Walker, whether or not there [fol: 600] was any other reason or motive or whether you had anything else in mind in omitting that statement from the Cutter Laboratories application?

A. No.

Q. You did not have anything else in mind?

A. No.

Q. Isn't it a fact, Mrs. Walker, that the reason you omitted from that application at Cutter Laboratories the statement as to your law school education ~~was that~~ you were a member of the Communist Party and you felt that if you disclosed the fact that you were a member of The Bar and had graduated from law school, they would through that means track down your past history of activities as a member of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. I call your attention to the transcript, page 32, line 18. Mr. Edises had asked you: "Now coming to the next section headed 'Previous Employment?', there appear the figures '1939', 'John Tripp, Att'y', 'File Clerk', 'Salary \$35', 'Reason for Leaving: Marriage'. Was that statement true or false?" Your answer: "It was false."

Were you then asked this question and did you give this answer: "And will you state to the Board what led you to make that false statement on the application?"

Answer: "Well, I felt that in order to get a job I would have to show some kind of experience, and so I made up [fol. 601] some kind of previous experience, feeling quite sure that I could handle any job that they gave me"?

Were you asked that question and did you give that answer?

A. Yes.

Q. Now, Mr. Walker, was there any other reason or motive, or did you have anything else in mind when you made that false statement on the application at Cutter Laboratories with respect to your previous employment by a fictitious individual by the name of John Tripp?

A. No.

Q. Isn't it a fact, Mrs. Walker, that the reason why you listed John Tripp as a previous employer and also why you gave Dr. William Berke as a reference and Mr. Francis McTernan, Jr. as a reference was because of the fact that you were a member of the Communist Party and that you knew that the two McTernans and Dr. Berke would cooperate with you in concealing from Cutter Laboratories the fact that you had previously been employed as an attorney with the OPA and the Gladstein firm?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. And isn't it a fact that the reason why you listed those individuals and concocted this fictitious employer was because of the fact that you were a member of the Communist Party at the time and that you desired to get into the Cutter plant in order to carry on more effectively and more actively the program and the activities of the Communist Party?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

By Mr. Johnson:

Q. Calling your attention to page 34 of the transcript, line 16. I call your attention to the fact that Mr. Edises had asked you: "Now, you did not state under the heading of 'Previous Employment:' your employment with this law firm or your employment with the canneries. Will you tell the Board why you didn't list those?" Your answer was: "Well, I had been told by persons I knew in the CIO that Cutter Laboratories was——" I objected. Then Mr. Edises said: "Mr. Chairman, it goes to the state of her mind, which is a matter of fact." Following which your answer was, at page 35, line 14: "—an anti-union employer; that I was confident that if I told them that I had worked for a firm of labor attorneys, such as the firm I had worked for was, or that I had been a union organizer, I would not be hired. So I didn't tell them."

Were you asked that question and did you give that answer?

A. Yes.

Q. Did you have anything else in mind or were you in any different state of mind or were there other factors or reasons or motives which were in your mind when you concealed those facts?

A. No.

Q. Isn't it a fact and a matter of fact, Mrs. Walker, that your state of mind at the time was that you were [fol. 603] a member of the Communist Party; that you were interested in getting out into the field and taking a more active rôle in carrying on the field of activities in which you were interested and the activities of the Communist Party; and that it was for that reason that you misrepresented those facts?

Mr. Edises: The same objection.

The Chairman: The same ruling.

The Witness: The same answer.

Mr. Johnson: That's all.

(Witness excused.)

Mr. Johnson: That is the Company's case, Mr. Chairman.

The Chairman: Rebuttal?

Arbitrator St. Sure: I assume that your motion on requesting an instruction from the Chairman to have the witness answer applies to having an answer to these latter questions?

Mr. Johnson: Yes.

The Chairman: Consider the same motion made.

Mr. Johnson: We now being at the end of our affirmative case and having asked the witness these questions, I make the same motion, which definitely and specifically is that she be ordered by the Chairman to answer all of the questions which I have just propounded to her and which she has refused to answer.

The Chairman: Submitted.

Arbitrator St. Sure: And in view of the lack of the answer and the lack of full cross examination, you would like all of the testimony stricken?

[fols. 604-607] Mr. Johnson: Yes.

The Chairman: The same ruling.

[fol. 608]

Proceedings

The Chairman: Ready?

Mr. Edises: Ready.

The Chairman: Go ahead.

Mr. Edises: I will call Barbara Smith.

BARBARA SMITH, called as a witness in rebuttal on behalf of the Union, having been first duly sworn by the Reporter-Notary, was examined and testified as follows:

Direct examination.

By Mr. Edises:

Q. Your name is Barbara Smith?

The Chairman: The lady here (indicating Nellie Smith) is a witness also, is she?

Mr. Edises: Yes.

A. Yes.

By Mr. Edises:

Q. Were you employed by the newspaper known as the Labor Herald in August and September of 1948?

A. Yes, I was.

Q. And in what capacity?

A. Well, I took care of the circulation and office secretary.

Q. Now, do you happen to know whether Cutter Laboratories had a subscription to the Labor Herald?

A. Yes. They have had a subscription for quite some time.

Q. Did you keep records of any kind with respect to circulation?

A. Yes. We had a card for each subscription.

Q. Now I hand you a card entitled "Cutter Lab, A. K. [fol. 609] Beckley, Fourth and Parker, Berkeley 2, Key 8-34-49", and I ask you if you can identify that card. What is that?

A. Yes. This is a subscription card by which we kept record of when the subscription started and when it ended, expired.

Q. Now, there are—

Mr. Johnson? Just a minute. As far as the card is concerned, I don't want to waste a lot of time on irrelevant matters, but was this lady with the Labor Herald? Did she say she was with them at that time?

Mr. Edises: Yes.

The Witness: (Nodding affirmatively.)

By Mr. Edises:

Q. Now, this card that you hold in your hand—

Mr. Johnson: Without a lot of useless—

The Chairman: No objection to the introduction of the card?

Mr. Johnson:—questioning—Oh no. I will stipulate to the facts, if Mr. Edises tells me that he is only going to these facts here. If he wants to go beyond, I have no right to foreclose him. But there is no use wasting time on this kind of material.

Mr. Edises: There is only one additional point that I want to bring out by this testimony.

Mr. Johnson: Do you want to clear this up first?

The Chairman: Let him go ahead. He says he has one more question first.

By Mr. Edises:

Q. There are certain notations on there. One of them is the notation "9-24-48 by phone"... Can you tell us what [fol. 610] that means?

A. Well, there was a phone conversation from Mrs. Corvelli of the Cutter Lab.

Q. Now, those words, "Mrs. Corvelli", are written on there. Is that in your handwriting?

A. Yes.

Q. And you say there was a phone conversation with her?

A. Yes.

Q. Did it relate to this matter of the subscription?

A. That's right.

Q. And can you tell us what the conversation was, as closely as you can recall?

A. Well, as I recall, she wanted to make sure that Mr. Beckley saw the Labor Herald. They already had a subscription, but there was some question as to whether he got hold of the paper and she wanted to make sure that he saw it; he wanted to make sure that he did.

Q. Is this what she told you over the phone?

A. That is what she told me.

Q. And thereupon did you make some change or was something new done with respect to the subscription?

A. Yes. I'm not certain: either we changed the subscription that was already going so that Mr. Beckley's name would appear on the label, or we started a new subscription with his name. But the point of his was to have his name on the label so that the paper would be delivered to him.

[fol. 611] Q. And that was told you by this lady from Cutter Lab.; is that right?

A. That's right.

Mr. Edises: That's all.

Mr. Johnson: What do you mean "That's all"? I assume that you want to get the card in there or you would not have brought the lady over here.

Mr. Edises: That is all right. I will put it in. I don't think the card matters too much. What I was interested in primarily was showing that this subscription at that time was changed so that it would be brought directly to Mr. Beckley's attention. But I will offer the card.

The Chairman: All right.

Mr. Johnston: I noticed that you had nice photostats. That is why I wanted to be sure that you had a chance to use them.

The Chairman: Union Exhibit 13.

(Copy of subscription card to Labor Herald in name of Cutter Lab., A. K. Beckley was received in evidence and marked Union Exhibit No. 13.)

Mr. Edises: May I have leave to keep the original? It is part of a file.

The Chairman: Yes, indeed.

Cross-examination.

By Mr. Johnson:

Q. Mrs.—Is it "Mrs." Smith?

A. Yes.

[fol. 612] Q. By the way, where do you reside, Mrs. Smith?

A. Albany.

Q. I beg your pardon?

A. Albany.

Q. I would like to have the address.

A. Eleven—

Mr. Edises: Just a minute. What is the reason for asking?

Mr. Johnson: The normal procedure in producing a witness is to ask the name, address and occupation. That was not done. For informative purposes we want to know the address as well as the name.

The Chairman: Go ahead. Is there objection?

Mr. Edises: I don't see any particular reason. The lady is not working for the Labor Herald at the present time; and experience indicates that people who work for labor journals such as the Labor Herald frequently have difficulty in getting and holding jobs. I don't want to put her "on the spot", that's all.

Mr. Johnson: It is not my intent to ask her where she is working now, if that is what you are worried about. I merely asked her what her address is.

Mr. Edises: I haven't any objection to that.

A. (Continuing:) 1134-E, Sixth Street.

By Mr. Johnson:-

Q. I didn't get the street.

A. Sixth.

Mr. Johnson: "E" as in Edises.

Mr. Edises: Thank you, sir.

[fol. 613] By Mr. Johnson:

Q. And the city?

A. Albany.

Q. Now, Mrs. Smith, you said that you were working with the Labor Herald. When did you go to work for the Labor Herald?

A. In August of 1948. I had worked there previously..

Q. And then you went away for some time and then came back?

A. Yes.

Q. So that this particular service to which you are referring was from sometime in August, 1948 until when?

A. October of 1949.

Q. I beg your pardon?

A. October of 1949.

Q. Had you had any prior discussions with this Mrs. Corvelli or anyone else at Cutter Laboratories prior to the occasion that you have related?

A. I don't recall any.

Q. When did you say that conversation was?

A. Well, it must have been 9-24-48.

Q. Why do you say "it must have been" that date?

A. Well, because the notation appears on the card: "9-24-48 by phone".

Q. I notice that notation is under "Date" and then under the column "P(AID)" it says "by phone". What does that mean?

A. Well, it was ordered by phone; then when they paid, 10/26 they paid and \$2.50 was marked for "Paid".

Q. I see. Now, do you recall of your own knowledge the [fol. 614] conversation with this Mrs. Corvelli?

A. Yes, I remember.

Q. Now, exactly what was it that she said?

A. As I recall, the point of the telephone conversation was to see to it that the Labor Herald was delivered to Cutter Laboratories in a way that Mr. Beckley would be sure to get hold of the paper.

Q. I see. Now, that is what I want to get. She didn't say "Mr. Beckley wants to read the paper every morning" or anything to that effect, did she?

A. No.

Q. She merely said "We want the subscription handled so that it will come to Mr. Beckley's office or be received by him?"

A. Yes.

Q. And she didn't make any statement at that time that he had read or personally seen any particular issue, did she?

A. No, I don't recall any such statement.

Q. And did she ever call you back to tell you that Mr. Beckley had read and enjoyed any of the issues of the paper?

A. I don't recall it.

Q. In other words, you don't know anything about any particular issue which he read or saw?

A. No.

Q. To be specific, you have no knowledge at all about whether or not Mr. Beckley ever saw the issue of October 19, 1948, which would have been approximately between [fol. 615] three and four weeks after you say the telephone call was received?

A. I would have no information as to whether he read that or not.

Q. And again to be specific about it, you don't know whether or not Mr. Beckley ever saw or read the issue for August 23, 1949?

A. No.

Q. They never called you up and asked you for any copies of either of those editions?

A. Well, they may have. I can't remember whether they ever called and asked for any specific issue. I wouldn't be able to remember such a thing.

Q. I was only asking if you happened to know.

A. Often people would call and ask for a specific issue, and they might have.

Q. That is why I asked you the question. You don't have any recollection of that?

A. I don't remember.

Q. If people *are* called up during the time that you were there from August, 1948 to October 1949, would you normally have been the one whom they would have called asking for extra copies?

A. Yes.

Q. You don't recall receiving any such request at any time from Cutter Laboratories?

A. Well, I don't remember. But such a thing I probably wouldn't have remembered, because we often got calls.

Q. You were there until after October 5, 1949, were you?
[fol. 616] A. Yes.

Q. Do you recall any time shortly after October 5, 1949 anyone from Cutter Laboratories calling in and asking for some extra copies of some issues of the Labor Herald?

A. I don't remember. Their subscription ran out then.

Q. Between August 23, 1949 and October 5, 1949 do you have any independent recollection of anyone from Cutter Laboratories calling in and asking if they could purchase some additional copies of a number of the issues of the Labor Herald?

A. Well, I remember that at times people did, and I think it's possible they could have called and asked for them.

Q. Do you have any recollection of Mr. Thomas Stanton, who is seated next to me here, or myself calling over there between August 23, 1949 and October 5, 1949 and making inquiry as to whether or not we could obtain from your people some additional copies of two or three issues of the Labor Herald?

A. Well, I can't remember your calling in in particular, no.

Q. My name is Gardiner Johnson and this is Mr. Thomas Stanton. We are attorneys.

A. Yes. Well, I don't remember.

Mr. Johnson: That's all.

A. (continuing) That's all right. I was just going to say that the reason I happened to remember that telephone conversation: I had known the girl before, and so that made an impression on me. But we got so many calls for extra copies of the paper that—

By Mr. Johnson:

Q. Just so the matter will be clear.

[fol. 617] A. I know when there was a change in the subscription, that would be a different kind of a call than just for extra papers.

Q. As far as that particular call is concerned, the one of September 24, 1948, you have told us, as far as you are able to remember it, essentially everything that took place?

A. Well, practically everything.

Mr. Johnson: That's all.

The Chairman: Any questions, Mr. St. Sure?

Arbitrator St. Sure: None.

The Chairman: Mr. Heide?

Arbitrator Heide: No.

The Chairman: Is this the current card from the files of that newspaper?

Mr. Edises: I believe it is, Mr. Chairman.

The Witness: Yes.

The Chairman: Is the subscription still in effect?

Mr. Burke: Yes. It expires August 31, 1950.

Mr. Edises: August 31, 1950.

That is all, Mrs. Smith.

The Chairman: Thank you.

(Witness excused)

Mr. Edises: Was that photostatic copy identified as a Union exhibit, Mr. Chairman?

The Chairman: 13.

Mr. Edises: Will it be all right if Mrs. Smith leaves?

Mr. Johnson: As far as we are concerned.

[fol. 618] Mr. Edises: Thank you very much.

Nelline Smith.

NELLINE SMITH, called as a witness in rebuttal on behalf of the Union, having been first duly sworn by the Reporter-Notary, was examined and testified as follows:

Direct examination.

By Mr. Edises:

Q. Your name is Nelline Smith?

A. It is.

Q. And your address, Mrs. Smith?

A. 737 Sun Street, Oakland.

Q. Are you an employee of Cutter Laboratories?

A. I am.

Q. And I believe you are also an official of the Union there; is that correct?

A. Yes.

Q. What is your position?

A. Chief steward, at present.

Q. You hold the same position that Mrs. Walker formerly held?

A. I do.

Q. And prior to that you were assistant shop steward?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Assistant chief shop steward?

A. (Nodding affirmatively).

[fol. 619] Q. Do you recall a time, Mrs. Smith, on or about September 7, 1949 when the Union called a meeting at the plant to discuss the pending wage negotiations?

A. You say "called a meeting at the plant" or called a meeting—

Q. The Union called a meeting of the employees.

A. Yes.

Q. And do you recall also that the same day the Company called one or more meetings at the plant?

A. Yes.

Q. And what was the general subject matter of those Company meetings?

A. Well, in regards to the Union meeting that was called. It seems as it was thought there was to be a strike vote taken.

Q. Now, in the Company meeting—

Mr. Johnson: Will you read that last part of the answer?

(Answer read.)—

Mr. Johnson: I ask that that be stricken as not responsive.

The Chairman: Read the question and answer, will you.

Mr. Edises: I asked the general subject of the meeting.

(Question and answer read.)

Mr. Edises: That will—

The Chairman: Just a moment. Just a moment.

I don't think it is responsive. You had better start over again.

Mr. Edises: I think it is leading to something further. In other words, she is—

[fol. 620] The Chairman: But you asked about one meeting and she answers about another one.

Mr. Edises: No.

The Chairman: Well, it is not clear to me. Go ahead and pursue it.

Mr. Johnson: May the answer be stricken pending another question?

The Chairman: Yes, yes.

By Mr. Edises:

Q. I am calling your attention now to the Company meeting, Mrs. Smith, that you attended on that day. Was that held during working hours?

A. Yes.

Q. And what Company representatives spoke to the employees?

A. Well, if I am not mistaken, John Wagner showed us

some charts and talked about the charts; and I can remember that near the end of the meeting Mr. Beckley spoke.

Q. Now, did Mr. Beckley say anything about the matter of a strike?

Mr. Johnson: That is objected to as leading and suggestive on a vital issue.

The Chairman: Overruled.

I wish you would lead as little as possible.

Mr. Edises: You may answer.

The Chairman: You can answer the question.

A. Only that we should be sure to attend the meeting and exercise our rights in voting and that we wouldn't benefit ourselves any if we should come out with a strike vote.

[fol. 621] By Mr. Edises:

Q. Now referring to this meeting that Mr. Beckley said you should attend, that is what meeting? What meeting are you referring to?

A. Department meetings that were held on the job.

Q. By the Union?

A. Oh, no.

Q. No. I am afraid I mixed you up. You have quoted Mr. Beckley as stating that you should attend—

A. Should attend the Union meeting afterwards.

Q. That is what I am getting at. That you should attend the Union meeting afterwards?

A. Oh yes.

Q. I see. Now I am going to call your attention to a different time and a different meeting. Do you recall that on or about the 5th day of October there was a grievance meeting concerned with the grievance of Reese Lawler?

A. Yes.

Q. And where did that meeting take place?

A. In Mr. Beckley's office.

Q. And do you recall who was present for the Union?

A. Doris Walker; Bill Burke; myself. I think that was all that there was there for the Union.

Q. Was the subject of the grievance present: Mr. Lawler?

A. Oh yes, yes.

Q. Do you recall who was present for the Company?

[fol. 622] A. Well, there were two men that after I found out were these two (indicating Mr. Johnson and Mr. Stanton). I am sure he (indicating Mr. Johnson) was there.

Q. Are you looking at Mr. Gardiner Johnson?

A. Yes. That was the first time I had seen him. And Mr. Beckley and Fred, I believe.

Q. Fred Cutter?

A. Yes.

Q. Now, was there any discussion at that meeting of anything apart from or not related to the grievance of Reese Lawler? Anything said that had nothing to do with the grievance of Reese Lawler?

A. Oh yes. In regards to a broadcast. I don't think he (indicating Mr. Cutter) liked it very well.

Q. Who is "he"?

A. Fred Cutter.

Q. Did you gather that from his manner at the meeting or what he said?

A. Oh yes. Naturally.

Q. And did Mr. Cutter say anything or ask any question of anyone?

A. He wanted to know who was responsible.

Q. Tell us exactly what he said and did at that time.

A. He asked Doris, Was she responsible? He asked Bill, Was he responsible? And Bill answered that the Union was responsible.

Mr. Edises: No further questions.

[fol. 623] The Chairman: "Bill" meaning Mr. Burke?

The Witness: Bill Burke, yes.

Mr. Edises: That's all.

Wait. Mr. Johnson may have some questions to ask you.

Mr. Johnson: No questions.

Mr. Edises: That's all.

The Chairman: Do you have any questions?

Arbitrator St. Sure: No.

Arbitrator Heide: No.

Mr. Edises. May Mrs. Smith be excused? I believe I told Mr. Wagner that she was—

Mr. Wagner: This morning is all right as long as she is back by 1:00.

Mr. Edises: You can stay this morning.

The Witness: I will stay a while.

(Witness excused:)

Mr. Edises: May I impose upon you for about sixty seconds?

(Short recess.)

Mr. Edises: Ready to proceed, Mr. Chairman.

I will recall Mrs. Walker for just one point.

DORIS B. WALKER, called as a witness in rebuttal on behalf of the Union, having been previously duly sworn by the Reporter-Notary, was examined and testified as follows:

Direct examination.

By Mr. Edises:

Q. Mrs. Walker, after your discharge on October 6 1949 [fol. 624] did you ever visit the plant?

A. Yes.

Q. What were the occasions of your visits?

A. One visit was when my grievance, the grievance over my discharge, was taken up; and there were several negotiating meetings which I attended.

Q. Can you—

The Chairman: Now let's pause for a minute. What is the materiality of going into occurrences after the discharge? Because I sustained an objection yesterday.

Mr. Edises: Yes, Mr. Chairman. I realize that. But the purpose is to show, and I will offer to prove through the testimony of this witness, that she was permitted to visit the plant on a number of occasions after her discharge; that no limits or restrictions whatever were placed on her activity or on her perambulations in the plant; she was not told to follow any restricted procedure; and in no way were any precautions taken reflecting any alleged fear of subversive activities or sabotage on her part.

The Chairman: Do you have any objection to that line of inquiry?

Mr. Johnson: No, I don't. I expressed myself yesterday. I think a continued course of conduct after the discharge is definitely relevant for the purpose of showing state of mind, and I offered to present evidence along that line—

Mr. Edises: Well, Mr. Chairman.—

Mr. Johnson: —But I think it is a two-way street.

[fol. 625] Mr. Edises: Mr. Chairman, Mr. Johnson has the neat little habit of lumping different things together and making them appear the same. Now, it is one thing to talk about the reasons why the Company discharged her, and matters which could not possibly have come to the Company's attention until long after her discharge obviously could not have entered into the Company's motivations. Now, it is an entirely different thing and it is making hash of logic to contend that they are identical. It is an entirely different thing to go into the Company's attitude toward Mrs. Walker as manifested by their conduct after her discharge.

Mr. Johnson: Just briefly—

The Chairman: Of course, if you are talking about logic, this is probably logically relevant, and I suppose the same could be said of the line of inquiry that Mr. Johnson was pursuing. But I think in the interest of time and considerations of that kind, sometimes relevant evidence is excluded even in courts.

I am disposed to sustain an objection to this line of inquiry on my own motion.

Arbitrator St. Sure: My feeling is, If we go into the question of the conduct of the Company after the fact and the question of the conduct of the witness after the fact, we may get into that sort of thing and I would certainly be inclined—

The Chairman: I am not sustaining this objection simply because I sustained the other one.

Arbitrator St. Sure: On either ground, in the interest of time.

[fol. 626] Arbitrator Heide: I think there is a difference.

Mr. Johnson: The reason or basis of my statement, Mr. Chairman, was that we felt in offering proof yesterday as to Mrs. Walker's conduct on November 11, 1949, a month after her discharge, and on July 4, 1950, some eight months after

her discharge, the evidence went to her general state of mind. By Mr. Edises' own concession, that is the purpose for which he is offering this testimony against the Company.

The Chairman: I am disposed to sustain the objection.

Mr. Edises: Will you step down.

The Chairman: Furthermore, there isn't any particular controversy on this point. You talk about her ability to walk around the plant being curtailed. The record is perfectly clear that it wasn't.

Mr. Edises: Step down.

COLLOQUY BETWEEN BOARD AND COUNSEL

(Witness excused.)

Mr. Johnson: Another point that I would just like to have on the record: If Mr. Edises had been allowed to go into that point we would, of course, request the right to show what the true facts were with respect to surveillance of her after the discharge.

The Chairman: Do you have any further witnesses?

Mr. Edises: I have a couple of documents that I would like to offer.

The first is the Constitution of the United Office and Professional Workers of America. I call the attention of the Board particularly to—

[fol. 627] The Chairman: May I have a copy of it.

Mr. Edises: —Article II, Section 1, which reads in part—

The Chairman: Page?

Mr. Edises: Page 5.

The Chairman: Article II.

Mr. Edises: Section 1, second sentence of which reads:

“No applicant shall be barred from membership because of race, color, national origin or religious or political beliefs.”

That is the section I want to call to your attention.

Mr. Johnson: If that is the sole purpose of offering this document, we object to it on the grounds that it is incompetent, irrelevant and immaterial; a self-serving statement and an obvious attempt to set up limitations which in no way are binding on the Company.

Mr. Edises: But it is binding on the employees.

The Chairman: Overruled. Just a minute. Exhibit 14

(Copy of Constitution of United Office and Professional Workers of America was received in evidence and marked Union Exhibit No. 14.)

The Chairman: Let me ask you a question. This Union was affiliated or connected with the CIO at one time but no longer is; is that correct?

Mr. Edises: That is correct.

Mr. Cutter: Tossed out.

The Chairman: When did it cease to be affiliated?

[fol. 628] Mr. Edises: It was expelled on March 1, 1949.

Arbitrator Heide: 1949 or 1950?

Mr. Edises: 1950.

Mr. Burke: 1950.

Mr. Edises: Now I would also like to offer, Mr. Chairman, the chronology that you requested of the Union-Management relations.

Arbitrator St. Sure: Do you have a copy?

Mr. Edises: Do you have a copy of this, Mr. Wagner?

Mr. Wagner: No.

Arbitrator St. Sure: In connection with that there was a request, as I recall it, for the '46, '47, and '48 contracts. I don't know who was going to produce them. Are those available?

Mr. Edises: I don't recall that request.

The Chairman: Yes, yes. It was in connection with the change in the non-discrimination clause.

Arbitrator St. Sure: That is correct. The non-discrimination clause.

Mr. Burke: I assume the Company will use its own copy.

The Chairman: We don't need a copy. What we wanted to ascertain was the exact history of the non-discrimination section, which is—

Mr. Johnson: I would suggest, Mr. Chairman, that that be written up on a sheet similar to what he has here on the history of the bargaining and be attached to that sheet and submitted to you as one exhibit.

The Chairman: Will you do that?

[fol. 629] Mr. Wagner: It could probably be incorporated just by a statement that it is—

Mr. Johnson: Let's go through each contract and list the date it was executed or became effective and the provisions with respect to the point the Chairman is asking about. That can all be done on one sheet.

Is that agreeable to you?

The Chairman: What we want is the history of Article X, Section 1. When was it first adopted and what amendments have been made, and when were the amendments made and by whom? Whether by—

Arbitrator St. Sure: Order or collective bargaining.

The Chairman: Whether by Arbitrator's award or War Labor Board Directive or by collective bargaining.

That may take a little time, and I would suggest what you do is this. I would rather have it in this form. I would suggest that Mr. Burke and Mr. Wagner agree on such a statement, put it on a piece of paper and hand it to the Reporter, and it will be Board Exhibit No. 7.

Mr. Edises: Very well.

(History of "non-discrimination" clause now in current collective bargaining agreement to be furnished by the parties, Board Exhibit No. 7 being reserved for same.)

Mr. Edises: Now, Mr. Chairman, with respect to this chronology, it is my understanding that there is one item on which there is not unanimity of views. I think it is the [fol. 630] item "October, 1945", which is referred to as the "Twenty minute stop-work meeting of employees held at plant gate at time day shift was scheduled to go to work as protest organized by union against company's refusal to make WLB award effective". And I think Mr. Wagner takes exception to that characterization in some way.

I would like to offer this—Well, I guess that would be a Board exhibit too.

The Chairman: Let me look at it for a moment, please.

Now, the understanding was that Mr. Burke and Mr. Wagner would attempt to agree on this statement. And are you in agreement on it?

Mr. Johnson: No.

The Chairman: You are not. That is all I want to know.

Mr. Wagner: Just a very minor—

The Chairman: Just a moment.

Is the statement satisfactory to you, Mr. Burke?

Mr. Burke: Yes.

The Chairman: Now, in what particular is it unsatisfactory to you, Mr. Wagner?

Mr. Cutter: I think Mr. Wagner wasn't there at the time. Perhaps I should make the comment.

The Chairman: Will you come up here so that Mr. Conklin will be happy.

Mr. Cutter: The item in question is this matter of the work stoppage. There was a harangue at the gate at that date. As far as was evident there had been no vote of the [fol. 631] employees for a work stoppage; there was simply, if I remember correctly, a sound truck at the gate. Some of the employees stopped to listen to it, some of them came in and punched the time clock and went to work.

That was our only exception to that particular statement.

The Chairman: Well, have you got the statement before you?

Mr. Cutter: Yes.

The Chairman: Maybe the effect of what you say would be cured by your desire to have the word "some" put in after the word "of" and before the word "employees".

Mr. Cutter: Yes.

Mr. Johnson: I haven't discussed this with him at all, Mr. Chairman, but I assume that his point goes a little further than that. I gather from his statement that the Company contends basically that there was a delay in going to work or work stoppage by some employees. But his point is that it was not a work stoppage resulting from collective bargaining, with the action in support of the work stoppage authorized by a vote of union members through the regular union channels.

The Chairman: Well, it seems to me that that is implicit when you use the word "some".

Mr. Edises: Let me find out.

The Chairman: But I think we all understand each other. It is clear enough now.

Mr. Edises: Were you there, Mr. Cutter?

Mr. Cutter: I was there. "I was there, Charlie!"

[fol. 632] Mr. Edises: We have someone who was present.

The Chairman: I don't want to try a work stoppage that happened five years ago.

Mr. Edises: It is our understanding that only thirty employees went into the plant. Now, that is the statement that we have and that is our understanding.

The Chairman: Well now, —

Mr. Edises: We are willing to put the word "some" in. I don't think it matters too much anyway.

The Chairman: All right. This is Board Exhibit No. 8. Board Exhibit No. 7 is to be supplied.

(Brief history of results of union-management relations existing between Company and Union at Cutter Laboratories was received in evidence and marked Board Exhibit No. 8.)

Mr. Edises: Do you have a copy of this, Mr. Johnson?

Mr. Johnson: Yes. I have one copy. Do you have an extra one for the Company records?

Mr. Edises: I have a copy that I think we can spare.

You (indicating the Chairman) have the original there.

Mr. Johnson: I am amending my copy by writing in the word "some" employees.

The Chairman: "Some". I just noted it there because I wanted to attempt to epitomize on the exhibit what the testimony was. The word "some" will be understood in the context of what appears in the record.

[fol. 633] Mr. Edises: I have several motions which I would like to make. Do you want me to make them before or after I rest? As far as testimony is concerned we rest.

The Chairman: Take your choice.

Mr. Johnson: I have one factual point, if you would prefer to have me make it now before you make your motions.

Mr. Edises: That is all right.

Mr. Johnson: In connection with the stipulation which was requested and agreed to, that the United Office and Professional Workers of America was expelled on March 1, of 1950 from the CIO, we would like a stipulation also that the reason for the expulsion was that the Union was Communist-dominated and had followed the Communist Party line.

Mr. Edises: We don't agree with that.

The Chairman: Well, I don't want to get into that.

Mr. Johnson: We also would like a stipulation, Mr. Chairman, that the California State Executive Council of the CIO, of which the Petitioner here testified she has been a member, has also been expelled from the CIO organization. I don't have the date but it is sometime in 1950. Maybe Mrs. Walker would know.

Mr. Edises: Well, I don't see the relevance.

The Chairman: Well, this is all background material. I am not particularly concerned with it. I started this, and I have got enough.

Go ahead and make your motions.

Mr. Edises: We move that the Company be required to [fol. 634] produce the 1947 report of the Retail Credit Association.

The Chairman: You go ahead and make all your motions, because I am going to have them all submitted, just as I did with Mr. Johnson's motions.

Mr. Johnson: May I speak to these one by one as he goes along, so my position may be in the record?

The Chairman: I don't think that that is necessary. You will fall into argument if we do that.

Mr. Edises: We move to strike all reference in the testimony to John T. or John Tripp McTernan on the ground of irrelevancy.

We move to strike out of the record Company Exhibits 6, 22 and 23 on the ground that there has been no adequate foundation; the source of these documents has not been disclosed.

We move to strike out all references to the Tenney Committee reports on the ground of remoteness from the issues, unreliability and irrelevancy.

And connected with my first motion about the 1947 report, in the event that the Company declines to produce the report upon being so requested by the Board, we move that all of the testimony of Mr. Cutter and any other Company witness regarding any alleged lack of knowledge at the time of the report of Communist activities or misrepresentations of fact on the part of Mrs. Walker be stricken from the record.

Do you want me to argue them?

The Chairman: No.

[fols. 635-692] Arbitrator St. Sure: I suggest, If you grant both motions, both counsel will have no record and we can go home. That might be all right.

The Chairman: You renew your request for the issuance of the subpoena that you prepared also?

Mr. Edises: Yes, I do.

The Chairman: Those motions are all submitted.

Anything further? Now do you rest?

Mr. Edises: I now rest.

[fol. 693] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 694] BOARD'S EXHIBIT 2-A

UNITED OFFICE AND PROFESSIONAL WORKERS OF AMERICA

Local

160 Grand Avenue
Oakland 12, California

October 12, 1949

Registered Mail—Return Receipt Requested

Mr. A. K. Beckley

Cutter Laboratories

4th & Parker Streets

Berkeley 1, California

Dear Mr. Beckley:

Pursuant to our agreement the Union herewith requests that the discharge of Doris Walker be submitted to arbitration.

We herewith submit our nominations for impartial arbitrator:

Mr. Louis Bartlett, Attorney, Berkeley.

Mr. Vincent Hallinan, Attorney, San Francisco.

Mr. Sam Kagel, Permanent Arbitrator, Longshore Industry, San Francisco.

Mr. Arthur Miller, Regional Attorney, Social Security Administration, San Francisco.

Mr. Alnsley Salz, Manufacturer, Phelan Building, San Francisco.

Please advise me within the next day or two whether any of the above named individuals is acceptable to you. Would appreciate your cooperation in the selection of an arbitrator within the shortest possible time in view of the fact that our agreement requires that the matter be submitted within two weeks of today, unless the time is extended by mutual agreement.

Very truly yours,

(S.) Wm. Burke, Business Agent.

WB:mp

uopwa-225-cio

[fol. 695]

BOARD'S EXHIBIT 2-B

October 18, 1949

William Burke, Business Agent
Local 225, United Office Professional
Workers of America,
160 Grand Avenue
Oakland 12, California

Dear Mr. Burke:

This will answer your letter to me of October 12, 1949, requesting "that the discharge of Doris Walker be submitted to arbitration".

As you know, arbitration is the final step in our established grievance procedure which has been functioning for a number of years. As you also know, under this established procedure grievances are required to be presented in detail in writing.

We have never been inclined to stand on matters of form and in the past we have not objected to immaterial and inessential variations from the established grievance procedure. In Doris Walker's case we were anxious to give you a hearing at the earliest date possible and we

therefore did not insist upon a detailed statement of the grievance prior to our first meeting. We had hoped that at the meeting the issues would be sufficiently defined to eliminate the necessity for such a statement and to permit a prompt submission to arbitration.

As you are well aware, however, the meeting did not result in any definition of issues whatever. Mrs. Walker was represented by Mr. Bertram Edises, attorney for the Union, and when she was asked direct questions as to whether she was a member of the Communist party or engaged in Communist activities, she was instructed by Mr. Edises not to answer and she did not answer. Mr. Edises stated that he had not given the matter sufficient consideration to state the position that would be adopted by the Union in the event of arbitration, and that the position which he stated orally at the meeting would be [fol. 696] subject to change in the event of arbitration. Mrs. Walker did not state any position whatever, and refused either to admit or deny any of the charges upon which she was discharged.

I think it will be clear to you that arbitration is not possible at this point because we do not know what is to be arbitrated. The Company has furnished Mrs. Walker and the Union with a detailed statement of the causes for which Mrs. Walker was discharged. Mrs. Walker has refused either to admit or deny the truth of the facts set forth in this statement, so that we do not know whether her position is that she was discharged without good cause because the facts stated are not true, or whether her position is that the facts stated are true, but that such facts do not constitute good cause for discharge. Obviously, no arbitrator could make an intelligent decision in her case unless he knew which of these two positions was being taken.

Since, under our established grievance procedure, we are entitled to a detailed statement in writing of the grievance, and since it has developed that such a statement is essential to the proper arbitration of the grievance, we must insist that such statement be furnished before the grievance is submitted to arbitration. We have in mind the stipulation in our agreement that a matter

of this sort be submitted to arbitration within two weeks from the date of the request for arbitration, and in keeping with the spirit of this provision, we intend to do everything in our power to speed the arbitration proceedings. The request contained in this letter is being made because we consider that a clear and precise definition of the issues is essential to a speedy arbitration. [fol. 697] If additional time is required in order to place the matter in proper form for arbitration, we will agree to such reasonable extension of the two-week period as may become necessary.

Yours very truly,

A. K. Beckley.

[fol. 698]

BOARD'S EXHIBIT 2-C

UNITED OFFICE AND PROFESSIONAL WORKERS OF AMERICA

Local 225

160 Grand Avenue
Oakland 12, California

October 24, 1949.

Registered Mail—Return Receipt Requested

A. K. Beckley, Vice President

Cutter Laboratories

4th & Parker Streets

Berkeley 1, California.

Re: Doris Walker

Dear Mr. Beckley:

This is in reply to your letter of October 18, 1949, asking that we furnish you with a detailed statement of the grievance concerning Mrs. Walker's discharge. We believe that the Union has complied with all of the requirements of the agreement precedent to arbitration. Nevertheless, as a matter of courtesy we are complying with your request for a further statement.

The Union's position is based on Article VIII, Section 1

and Article I, Section 3 of the current agreement. In substance our position is, first, that Mrs. Walker was not discharged for just cause. Second, that her discharge constitutes interference with, restraint and coercion of Mrs. Walker, an employee, because of membership and lawful activity in the Union and is an attempt to discourage membership in the Union by discrimination with respect to tenure of employment.

With respect to the specific allegations in your statement, it is the Union's position that the charges of irregularities in Mrs. Walker's employment application, while substantially true, do not constitute just cause for discharge for the following reasons:

1. They are minimal in character.
2. The Company has waived them by failing to act on its knowledge prior to the present time.
3. They have been overcome by Mrs. Walker's long record of faithful and efficient service.

With respect to the other main element of your statement; i.e., the charge of communism, the Union's position is that the charge, even if it were true, would not constitute just cause for discharge, in that employees have the right to engage in political activity without hindrance or interference by the employer. Consequently, we do not feel that it is necessary to enter an admission or denial of [fol. 699] the truth of the allegation. Since it is our view that your Company has no right to inquire into the questions of an employee's political affiliations, it obviously would be improper for us to answer the question in your letter as to whether the allegation of communism is true.

We trust that we will now be favored with your reply concerning the nomination of the impartial umpire.

Yours very truly, (S.) Wm. Burke, Business Agent.

WB:mp
uopwa-225-cio

[fols. 700-701] IN THE SUPREME COURT OF CALIFORNIA

MABEL BLACK et al., Respondents,

CUTTER LABORATORIES (a Corporation), Appellant.

OPINION—Jan. 18, 1955

[fol. 702] SCHAUER, J.—Cutter Laboratories, Inc., appeals from a judgment entered upon the granting of an order confirming the award of an arbitration board. (See Code Civ. Proc., §§ 1291-1293.) By the award, rendered by two of the three arbitrators with the third dissenting, it was held that appellant (hereinafter sometimes termed the company) had discharged one of its employees in violation of a collective bargaining agreement between appellant and the Bio-Lab Union (hereinafter sometimes called the union) of Local 225, United Office and Professional Workers of America, and that the employee was entitled to reinstatement and to back pay limited by the bargaining agreement to eight weeks regular pay less any outside earnings or unemployment compensation received during such period. We have concluded that, upon the undisputed evidence and upon the facts found by the arbitration board, the company is correct in its contention that the arbitrators exceeded their powers, that the award is contrary to law, that it would contravene public policy for the courts of this state to enforce reinstatement of the discharged employee, and that the judgment must therefore be reversed.

From extensive findings made by the arbitration board it appears that the employer, Cutter Laboratories, Inc., with offices and laboratories located in Berkeley, manufactures and sells throughout the United States and certain foreign countries vaccines, serums, antitoxins and other antibiotics for both civilian and military use. During World War II the company was subject to stringent security control by federal authorities, and its products and processes are said to be peculiarly subject to sabotage.

Since World War II the company has been under no specific contract obligation to any governmental agency to discharge employees who are "bad security risks"; any obligation to take such steps grows out of the duties it owes generally to its customers, its dealers, its employees, and its stockholders.

[fol. 703] The Bio-Lab Union of Local 225, United Office and Professional Workers of America C.I.O., was recognized in February, 1944, by the company pursuant to a National Labor Relations Board election. It is a union "generally denominated as 'left-wing'" and it as well as the U.O.P.W.A. was expelled from the C.I.O. in March, 1950.

The discharged employee, Mrs. Doris Walker, graduated from the University of California School of Jurisprudence in 1942, and is an active member of The State Bar of California. She was elected to Phi Beta Kappa and to the editorial board of the California Law Review. From 1942 to 1944 she was employed as an enforcement attorney with the federal Office of Price Administration in San Francisco and from 1944 to 1946 as an attorney with a firm of lawyers in the same city. She left the law firm and secured employment as a cannery worker sorting and trimming vegetables in three canneries in Oakland and San Francisco and (later in 1946) as an organizer for the Food and Tobacco and Agricultural Workers Union. She testified that she went to law school "because I was interested in becoming a labor lawyer" and that she left the law firm because her "time was spent on routine civil matters . . . and I became dissatisfied with my work and felt that I would rather take a more active role in the field in which I was interested and so I quit in order to take a job in a plant."

In October, 1946 Mrs. Walker sought employment at Cutter Laboratories and filled out an application form supplied by the company, on which under the heading of "Education" she concealed her attendance at law school, her law degree, and her admission to practice law in this state. Under the heading "Previous Employment" she concealed her entire previous employment record and showed a false employment as file clerk for six or eight

months in 1939 by "John Tripp Att'y," which the company later discovered to be a fictitious name. Mrs. Walker also gave a dentist and a lawyer in San Francisco as references, but at her request their letters of recommendation to the company did not reveal her subterfuge. She states that she intentionally deceived the company because of her belief it would not employ her if she were truthful. The company hired her as label clerk in its production planning department, and in April, 1949, she became a clerk typist in the purchasing department.

At the company plant Mrs. Walker became active in union affairs and in April, 1947, was elected shop chairman and also a member of the executive board of Local [fol. 704] 225. Late in 1948 she was elected chief shop steward; her duties as steward took her to all departments in the plant except the executive and administrative departments and primarily entailed representing the union in grievances arising under its collective bargaining agreement with the company. In the spring of 1949 she was elected president of Local 225; her term expired December 15, 1949, and a new president was elected.

Meanwhile, in May, 1946, following proceedings before the National Labor Relations Board, the company and the union entered into a contract; in January, 1947, the wage provisions thereof were opened and a 10 cent hourly wage increase agreed upon. In April, 1947, Mrs. Walker had been elected shop chairman and during the same month she and another union official learned that they were being investigated by the company as to past employment, character, and Communist affiliation. In June, 1947, the union served notice of intention to amend the contract and at the same time filed with the National Labor Relations Board an unfair labor practice charge against the company based on the investigations. A week-long strike ensued in August, 1947, which was settled following the intervention of Harry Bridges and as a result of negotiation with him. June 9, 1949, the contract was again opened, solely as to wages, and November 30, 1949, a two-year contract was agreed upon; on October 6, 1949, during the negotiations and at a time when company officials were angry at certain activities of Mrs. Walker pur-

portedly in connection with union demands, the company's discharge of Mrs. Walker which is here involved took place.

At the time of the discharge a company official read to Mrs. Walker the following notice:

"Mrs. Walker: As you are aware, the company has known for some time that when you applied for work with Cutter Laboratories on October 4, 1946, you made a number of false representations on your 'Application for Employment'.

"As we know now, you falsified the statement of your education so as to conceal the fact that you had completed a law school [sic] course at the University of California's School of Jurisprudence at Berkeley in May, 1942. You concealed the facts that you received the degree of Bachelor of Laws in May, 1942, and that you were admitted to the State Bar of California on December 8, 1942. You concealed that since that date you have at all times been admitted and entitled to practice as an attorney before all of the Courts of California.

"We know now that by falsification of the name of a [fol. 705] previous employer, you concealed the fact that from June, 1942 to February, 1944 you were employed by the Federal Government's Office of Price Administration, including employment as an Enforcement Attorney at a salary of about \$3,200.00 a year.

"We know now that you deliberately concealed from us that from February 1944 to December, 1945 you were employed as an attorney by Gladstein, Grossman, Sawyer and Edises, a well-known firm of lawyers specializing in labor cases.

"You know that a few weeks ago the 'Labor Herald', the official CIO newspaper, stated that the National Labor Relations Board had sustained a cannery firm that had discharged you for refusing to answer whether or not you were a Communist."

"We have checked the records. We know now that you deliberately concealed that in 1946, just before you applied for work here, you were employed by a series of canneries and had been discharged by them.

Ordinarily, an employee of the Company would be dis-

charged immediately for falsifying material facts on an 'Application for Employment'. Because you were an officer of the Union we kept you on the pay roll rather than open ourselves to a charge of persecuting a union officer. We have given your case careful consideration because we know very well that no matter how strong the case against you there will be a claim of discrimination because of union activities.

"Because no employer wants to become involved in a dispute of that kind we have been patient and deliberate in our consideration of your misconduct.

"On October 1, 1948, when you testified under oath before a Trial Examiner of the National Labor Relations Board, you refused to answer the question as to whether or not you were a member of the Communist Party.

"You refused to answer under oath the question as to whether or not you were or had been a member of the Federal Workers' Branch No. 3 of the Communist Party.

"You refused to testify under oath whether or not you were or had been a member of the South Side Professional Club of the Communist Party.

"We are convinced now, that you were and still are a member of the Communist Party, that you were a member of the Federal Workers' Branch No. 3 of the Communist Party, and that you were a member of the South Side Professional Club of the Communist Party.

[fol. 706] "Our recent investigation of your past record has uncovered previously unknown conduct that goes far beyond a mere concealment of material facts. We have just completed a thorough investigation and have a full report upon your past activities. We realize now the importance of the facts that you concealed from us. We realize the full implications of your falsification and misrepresentations. A follow-up and investigation of the 'Labor Heralds' recent revelations has uncovered a situation far more grave than we expected.

"We are convinced now that for a number of years, you have been and still are a member of the Communist Party. We are convinced beyond any question that for a number of years you have participated actively in the Communist Party's activities.

"The nature of our company's business requires more than the usual precaution against sabotage and subversion. Upon a disclosure that any employee is a member of the Communist Party, or has participated in other subversive or revolutionary activity, we conceive it to be the responsibility of management to take action.

"Confronted with such a situation, any inclination to be lenient or to grant a union official special consideration is out. In the face of your record there is no alternative open to us except to terminate your services at once. Accordingly, you are notified now that you are discharged for the causes mentioned. You will be paid the full amount due to you promptly."

"Shortly after" the notice was read to Mrs. Walker, it was likewise read to plant employees at a meeting called by the company. At the meeting statements were made by company officials "either to the entire group or in private discussion afterward, advising employees 'to get out of that left-wing union' and telling them that 'nothing but a left-wing union would press for wage increases at this time.'" Following the discharge of Mrs. Walker negotiations between the union and the company continued, and as already mentioned a two-year contract was agreed upon on November 30, 1949; it provided for wage increases and other contract changes. The company also agreed to, and did, pending the holding of a union-shop election, join the union in urging all eligible employees and all newly-hired eligible employees to become and remain members in good standing of the union.

The arbitration board further found that on October 5, 1949, following a grievance meeting with union representatives earlier in the day and prior to discharging Mrs. [fol. 707] Walker on October 6, officials of the company met with its attorneys and considered evidence which the attorneys had marshalled and which may be summarized as follows:

a. State Bar records showed no California lawyer named John Tripp (a name given by Mrs. Walker to the company, as a previous employer), but that there was such a lawyer with the given names of John Tripp; it developed that he was Mrs. Walker's supervisor at the O.P.A. (1942-1944).

17 Cal. 2d 85, 91 [109 P. 2d 650]; *American Nat. Bank v. A. G. Sommerville, Inc.* (1923), 191 Cal. 364, 371 [216 P. 376].) [6] In the second place, the employee's party membership was not shown or even asserted by her to have been an instance of past error but appears, rather, to have been the studied and calculated choice of a person of some intellectual attainment, and to have been persisted in on an active and devoted basis even at the time of the board hearings. Thus an entirely adequate ground for refusing to employ her (whether by original refusal to hire or by discharge) was a continuing one which was available to the employer at any time during its existence. [7] In this connection it may also be noted that the employer had not only the right to protect itself and its customers against the clear and present danger of continuing a Communist Party member in its employ, but also the duty to take such action as it deemed wise to preserve order in its plant and to protect its other employees, both union and nonunion, against the same danger and the possibility of "sabotage, force, violation and the like." The company properly stated in its notice of discharge, as related above, "The nature of our company's business requires more than the usual precaution against sabotage and subversion. Upon a disclosure that any employee is a member of the Communist Party . . . we conceive it to be the responsibility of [fol. 719] management to take action." "Knowing the facts which the company knew, it is difficult to conceive of any tenable defense which it could make, or which would be entertained in this court, as against an action for damages in a personal injury or wrongful death case arising from the wilful adulteration of any of its products by Mrs. Walker if it continued her in its employ and she should thereafter take that means of party activity. That acts of sabotage by Communists are reasonably to be expected at any time such acts may be directed by the party leader is not open to question, as has already been shown.

[8] The fact that the company was not specifically obliged by any governmental regulation to discharge Mrs. Walker affects in no wise its right to do so or the impelling public policy which militates against the order for her reinstatement; in this country, built as it has been upon the in-

b. A transcript of N.L.R.B. hearings of September 30 and October 1, 1948, in proceedings by discharged cannery workers, including Mrs. Walker, for reinstatement with back pay, showed a refusal by Mrs. Walker to answer the question, "are you or were you ever a member of the Communist Party?"

c. Statements to the following effect which appeared in certain of the Reports of the Joint Fact-Finding Committee on Un-American Activities in California for the years 1943, 1945, 1947, 1948 and 1949: That Mrs. Walker's O.P.A. supervisor associated with persons said to be "members of the Communist Party organization"; that "attorneys for the Communist Party are" the firm of labor lawyers by whom Mrs. Walker was employed in 1944 to 1946; reporting the identity of the Communist Political Association with the Communist Party despite a change of name "for strategic reasons May 20-23, 1944"; giving a biography of one Archie Brown, an admitted Communist Party member and a candidate for various public offices on that ticket and mentioning sponsors of his from various unions including the United Office and Professional Workers of America; and indicating that the "People's Daily World," a newspaper, is "the official organ of the Communist Party on the west coast."

d. Four issues of the "People's Daily World" contained items concerning Mrs. Walker: her employment by the labor law firm in February, 1944, was mentioned; she was listed as a 1944 alternate delegate to a State Committee of "the Communist Political Association"; and in October, 1946, a radio program was noted which she conducted on behalf of a committee "for Archie Brown for Governor . . . the Communist write-in candidate."

e. A photostatic copy of an unaddressed handwritten letter dated "7/10/46" and signed with Mrs. Walker's maiden name discussed the propriety of the introduction of a resolution on the maritime strike at the Cannery Workers Club by the writer and another, and stated that "I tried [fol. 708] to evaluate my action, as I try to evaluate whatever I do, from the point of view of the welfare of the working class and the strengthening of the Party."

f. Two "unidentified undated documents contained bio-

initiative and self-reliance of its citizens, the government is expected to step in only where the employer has failed or is unable to act for himself, and he is not obligated to await a governmental decree before taking steps to protect himself or to exercise his right to discharge employees who upon the established facts are dedicated to be disloyal to him, to be likewise disloyal to the American labor union they may purport to serve, and who constitute a continuing risk to both the employing company and the public depending upon the company's products.

This is not the first time that this court has been called upon to recognize and give effect to the public policy where its duty in the premises is clear. (See *James v. Marinship Corp.* (1944), 25 Cal. 2d 721 [155 P. 2d 329, 160 A.L.R. 900]; *Hughes v. Superior Court* (1948), 32 Cal. 2d 850 [198 P. 2d 885], affirmed 339 U.S. 460 [70 S. Ct. 718, 94 L. Ed. 985]; *Safeway Stores, Inc. v. Retail Clerks Intl. Assn.* (1953), 41 Cal. 2d 567, 574-575 [261 P. 2d 721]; see also *National Labor Rel. Board v. Cincinnati Chem. Wks.* (1944), 144 F. 2d 597; *National Labor Relations Board v. Kelco Corp.* (1949), 175 F. 2d 578.)

[9] Lastly, in the light of the undisputed evidence and of the specific findings of fact made by the arbitration board, it clearly appears that the conclusional finding that Mrs. Walker was discharged because of her labor union activities is untenable. We have here an exemplification of that which Justice Jackson (in *Dennis v. United States* (1941), *supra*, 341 U.S. 494, 564 [71 S. Ct. 857, 95 L. Ed. 1137, 1181]) so [fol. 720] clearly envisaged when he said of the Communist Party: "From established policy it tolerates no deviation and no debate. It seeks members that are, or may be secreted in strategic posts in . . . industry . . . and especially in labor unions where it can compel employers to accept and retain its members," and of that to which the court referred when it stated in *American Communications Assn., C.I.O. v. Douds* (1950), *supra*, 339 U.S. 382, 389 [70 S. Ct. 674, 94 L. Ed. 925]: "Congress [in enacting the Taft-Hartley Act] had a great mass of material before it which tended to show that Communists and others proscribed by the statute had infiltrated union organizations not to support and further trade union objectives . . . but to make them a

device by which commerce and industry might be disrupted” The issue of labor union activity herein is manifestly a false one, a subterfuge injected not to promote the cause of American labor but to further the Communist Party line. Mrs. Walker, as a Communist, was not at any time or in any way of her activities truly serving the cause of an American labor union or the interests of an American laboring man; she was but doing the bidding and serving the cause of her foreign master who “tolerates no deviation and no debate.” Her activities, therefore, upon any reasonable view of the evidence and the specific findings of fact, were not in truth union labor activities but were Communist Party activities.

Of no small significance in this connection is the fact that at the arbitration board hearing Mrs. Walker was asked, and she refused to answer the question, “Isn’t it a fact, Mrs. Walker . . . that the reason why you sought employment . . . at Cutter Laboratories was because you felt and believed, and had it in mind, that by obtaining that employment at that plant you could more actively and more effectively carry on the program and the activities of the Communist Party?” It is, we think, indisputable that if Mrs. Walker sought and obtained employment at Cutter Laboratories so that she “could more actively and more effectively carry on the program and the activities of the Communist Party,” her reinstatement in that employment would serve no cause save that of the Communist conspiracy. The courts of this country by making such an order would be but aiding toward destruction of the government they are sworn to uphold. The contract between Cutter Laboratories and the Bio-Lab Union cannot be construed, and will not be enforced, to protect activities by a Communist on behalf of her party whether in the guise of unionism or otherwise. [fol. 721] The judgment is reversed and the cause is remanded for further proceedings not inconsistent with the views herein expressed.

Shenk, J., Edmonds, J., and Spence, J., concurred.

TRAYNOR, J., Dissenting.—All the members of the court agree that we are bound by the determination of the arbi-

graphical material" about Mrs. Walker and stated, among other things, that she was issued 1945 Communist Party membership card No. 40360, that she joined the Communist Party in 1942 and had held various positions in various clubs and sections of the party including the "Cannery Club," that her present husband was a Communist Party member and organizer, and that in February, 1946, she listed on a Communist Party interview form the information that "she gave up law practice because it was frustrating to work with people she had to work with (namely, professional people)."

Mrs. Walker was not shown the above described evidence when she was discharged, but was confronted with it at the arbitration board hearing, and company attorneys asked her a series of questions concerning it and her Communist affiliations and activities, including the questions, "Are you now or have you ever been a member of the Communist Party?" and "Isn't it a fact, Mrs. Walker . . . that the reason why you sought employment . . . at Cutter Laboratories was because you felt and believed, and had it in mind, that by obtaining that employment at that plant you could more actively and more effectively carry on the program and the activities of the Communist Party?" Mrs. Walker's attorney objected to the questions on the grounds, among others, that the political affiliations of an employee are immaterial and that by not acting more promptly the company had waived the Communism issue as a ground for discharge. The board overruled the objections but also announced that Mrs. Walker would not be instructed to answer the questions "if she did not care to do so, but that if she refused to answer we would draw all justifiable inferences from the refusal." Mrs. Walker thereupon refused to answer the questions as an "unwarranted invasion into my private beliefs." The evidence as to her Communist membership and acceptance of party principles, with all the implications that flow therefrom, thus stands unchallenged and uncontradicted by her and clearly supports the board's finding that the company honestly and correctly believed her to be a knowing and deliberately acting Communist.

It was further found by the board that the company's

trators* that for two and one-half years Doris Walker's communist affiliations were a matter of indifference to Cutter, that Cutter therefore waived her communist affiliations as a ground for discharging her, that it discharged

* "While there is a work stoppage and a strike in this collective bargaining history [during Doris Walker's employment], both were directed at wage and contract issues. There is no evidence of any work stoppage, strike or other interference with production, the avowed objective of which was political, philosophical, subversive or revolutionary. . . .

"It is admitted that Doris Walker's conduct and the quality of her work were no different in 1949 from what they were in 1947. It is uncontradicted on the record that all of the essential facts upon which the discharge was based were in existence in 1947 and some years before. And finally, it is established to our satisfaction, by admission of the Company and by proof, that the reasons assigned in 1949 by the Company for the discharge were both known and believed by the Company in 1947.

"This state of the record raises a doubt that the Company ever took the assigned grounds for discharge seriously. . . .

"Finally, it appears, by admission of the Company, that notwithstanding the 1947 investigative report, there was no further investigation until the autumn of 1949. This is inexplicable to us if there was real concern about the combination of Communist Party membership and the omissions and falsifications disclosed by the 1947 investigative report.

"From all of this we are unable to find any satisfactory excuse for the Company's delay of over two years in asserting the grounds for discharge presented here. Contract relationships lose effectiveness if grievances about performance are not promptly discussed, settled or brought to an issue. This cuts both ways: unadjusted dissatisfactions of either employer or employees cumulate and exaggerate the importance of ensuing minor dissatisfactions. It seems to us that a commonplace of any 'just' system of discipline is the swift imposition of the penalty upon the heels of discovery of the offense. Under an agreement like this one, an employer should not be entitled to carry mu-

1947 investigation of Mrs. Walker indicated that she was a Communist and also disclosed most of the omissions and [fol. 709] falsifications in her application for employment, that "a strong case" had been made out that in 1948 the company learned of her cannery activities and of the cannery hearings, and that there was "at least a general indifference on the part of the Company about Doris Walker's activities until the autumn of 1949 and a specific indifference about obvious . . . clues to her background." The company stated that the reason they did not discharge Mrs. Walker in 1947 was because of a desire to "lean over backward" rather than to be accused of harassing union officials and because company attorneys advised that there was at that time insufficient evidence to support a discharge.

Under the provisions of the collective bargaining agreement in effect when Mrs. Walker was discharged, the company had agreed not to interfere with, restrain or coerce employees or discriminate against them because of *membership or lawful activity* in the union. It further agreed that, except for personnel reductions for lack of work or to effect economies, it would not discharge an employee "except for just cause." Both the union and the company also agreed that they will not discriminate against "a present or prospective employee or member because of race, color, creed, national origin, religious belief, or Union affiliation"; formerly "political" as well as "religious belief" was listed in this contract provision, but by negotiation the word "political" was amended out of the agreement. The board held that although removal of the word "political" seemed to authorize the practice of discrimination because of "political belief," "we are unable to conclude" that the company's agreements not to discriminate because of union activity and not to discharge except for just cause were thereby limited or modified "in such a way as to dispose of this dispute." In this connection it is to be noted that the old hoax that the Communist Party is but a political party has been effectively exposed, as is hereinafter shown in some detail.

The company at the board hearings advanced two grounds as the basis for discharging Mrs. Walker: "the omissions and falsifications in the Application for Employment and

her solely because of her lawful union activity, and that [fol. 722] in doing so it violated its collective bargaining agreement with the Union. (Code Civ. Proc., §§ 1280-1293; usually known grounds for discharge in his hip pocket indefinitely for future convenient use.

"In view of the foregoing considerations, we find that the grounds asserted by the Company for the discharge were stale. . . .

"The discharge of a top Union official and negotiator at a passionate climax in the middle of a stubbornly contested wage negotiation, standing alone, raises an inference that the discharge is retaliatory in nature and designed to restrain, coerce or interfere with the employee because of lawful Union activity. And we find convincing circumstantial evidence to support this inference.

"Two things that had lain fallow appear to have come to life when the Union opened the agreement for wage adjustment in June of 1949. The company then put into use a new form of Application for Employment which for the first time asked questions about religion and Communist affiliation. Then also, for the first time in over two years, the Company ordered a fresh investigation into Doris Walker's Communist affiliations.

"The discharge took place in a wave of heat over a radio broadcast and a newspaper advertisement, neither of which was complimentary. But they do not appear to have made any original contribution to the usual exchanges that go on during most wage negotiations.

"While the quality of Doris Walker's conduct and performance on the job remained unchanged for three years, her position of importance in the Union had progressively increased. It was only a few months before the wage negotiation opened that she was elected President of the Local; and she was a member of the Union negotiating committee. . . .

"In view of all of the foregoing considerations, we find that Doris Walker was unjustly discharged, that the reasons assigned by the Company for the discharge were not the real reasons and had been waived, and that the discharge interfered with, restrained and coerced an employee because of participation as an officer and negotiator on behalf of the Union in a wage negotiation."

membership in the Communist Party with the full implications of dedication to sabotage, force, violence and the like, which Party membership is believed to entail." Although finding that the company "honestly believed all of these things," and that the "accuracy of those beliefs is established in the record," the board further found that the company had not satisfactorily explained the delay of two years [fol. 710] (from 1947 to 1949) in asserting the grounds for discharge presented to the board and that such grounds were therefore stale. Finally, it was found by the board that the reasons assigned by the company were not its real reasons for discharging Mrs. Walker, and that actually the discharge, which occurred during wage negotiations, was "retaliatory in nature" and "interfered with, restrained and coerced an employee because of participation as an officer and negotiator on behalf of the Union in a wage negotiation." As already stated, the board's award, based on the above findings, was that the company's discharge of Mrs. Walker violated the collective bargaining contract provisions against discrimination *because of union activity* and against discharging *except for just cause*, and that she is entitled to reinstatement and to limited back pay. The company failed to comply with the award, the union petitioned the superior court for its confirmation, and the company asked the court that it be vacated. (See Code Civ. Proc., §§ 1287, 1288.) After a hearing the trial court confirmed the award, and this appeal by the company followed.

Section 1288 of the Code of Civil Procedure provides, so far as here material, that "In either of the following cases the superior court . . . must make an order vacating the award, upon the application of any party to the arbitration . . .

"(d) Where the arbitrators exceeded their powers . . ."

[1] As ground for reversal the company contends, among other things and as it contended before the trial court in seeking vacation of the award, that an arbitration award which directs that a member of the Communist Party, who is dedicated to that party's program of "sabotage, force, violence and the like" be reinstated to employment in a plant which produces antibiotics used by both the military and civilians is against public policy, as expressed in both

Pacific Vegetable Oil Corp. v. C.S.T. Ltd., 29 Cal. 2d 228, 233 [174 P. 2d 441]; *Sapp v. Baranfeld*, 34 Cal. 2d 515, 523 [212 P. 2d 233]; *Crofoot v. Blair Holdings Corp.*, 119 Cal. App. 2d 156, 185 [260 P. 2d 156]; see *Loring & Evans v. Blick*, 33 Cal. 2d 603, 609 [204 P. 2d 23].) It would seem necessarily to follow that we should affirm the judgment of the superior court confirming the award. The majority opinion holds, however, "that an arbitration award which directs that a member of the Communist Party who is dedicated to that party's program of 'sabotage, force, violence and the like' be reinstated to employment in a plant which produces antibiotics used by both the military and civilians is against public policy, as expressed in both federal and state laws, is therefore illegal and void and will not be enforced by the courts." Thus, even though an employer is indifferent to the fact that an employee is a Communist and is therefore no longer free under a collective bargaining contract to discharge him for being a Communist, it can nevertheless violate its contract not to discharge him for lawful union activity and use the fact that he is a Communist as an excuse for its unlawful action. It can do so because this court holds that the employment of a Communist poses such a threat to the security of the country that a contract by an employer with a union to keep a known Communist in its employ is against public policy and is therefore illegal. *A fortiori* such a contract by an employer with the employee is illegal. Thus by judicial fiat, but without the temerity to declare that Communists are deprived of civil rights (see Civ. Code, § 1556), the court abrogates not only the right of employers and unions to contract for the employment of Communists, but [fol. 723] the right of Communists as a class to enter into binding contracts. It does so by invoking public policy in violation of clearly stated policies of the Legislature (Civ. Code, § 1556, Lab. Code, § 923; Code Civ. Proc., §§ 1280-1293) and in a field in which Congress and the Legislature have clearly indicated their competence to deal with the problems involved.

Section 1556 of the Civil Code provides that "All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights." (See

federal and state laws, is therefore illegal and void and will not be enforced by the courts. With this contention we agree.

In the case of *Loving & Evans v. Blick* (1949), 33 Cal. 2d 603 [204 P. 2d 23], this court reversed a judgment confirming an arbitrator's award of a disputed sum owing under a building contract where it appeared that only one of the partners of the contracting firm was licensed as required by statute, and that neither the other partner nor the partnership held such a license. After referring to the principles that (p. 607) "a contract made contrary to the terms of a law designed for the protection of the public and prescribing a penalty for the violation thereof is illegal [fol. 711] and void, and no action may be brought to enforce such contract" and that (p. 609) "ordinarily with respect to arbitration proceedings, the merits of the controversy between the parties are not subject to judicial review" [citation] and that "arbitrators are not bound by strict adherence to legal procedure and to the rules on the admission of evidence expected in judicial trials," it was held (p. 610) that the "power of the arbitrator to determine the rights of the parties is dependent upon the existence of a valid contract under which such rights might arise," that "Section 1281 of the Code of Civil Procedure, providing for submission to arbitration of 'any controversy . . . which arises out of a contract,' does not contemplate that the parties may provide for the arbitration of controversies arising out of contracts which are expressly declared by law to be illegal and against the public policy of the state," that (p. 611) "an unlawful transaction cannot be given legal vitality by the arbitration process," that (p. 614) "the only evidence before the trial court showed without contradiction that the contract upon which the award was based was illegal and void because of respondents' failure to comply with the licensing requirements," and that therefore that court had erred in confirming the award. And in *Franklin v. Nat. C. Goldstone Agency* (1949), 33 Cal. 2d 628, 630-633 [204 P. 2d 37], a judgment confirming an arbitration award in favor of unlicensed contractors was likewise reversed upon the ground that the basic contract was illegal because in violation of the statutes and of "the public policy of this state."

also 1 Williston on Contracts [rev. ed.] § 222, pp. 669-670.) To deny persons other than those mentioned in this section the right to enter into employment contracts is to repeal *pro tanto* its provisions with respect to the class of contracts of greatest importance to those who must work for a living. Even if this court were at liberty so to repeal the statute, there are compelling reasons why it should not do so.

It is true that in this case only an employment contract is involved. There is nothing in the rationale of the majority opinion, however, that limits its application to such contracts. If it is illegal to employ a Communist, is it illegal to allow a Communist unemployment benefits? If the threat of communist activity makes an employment contract with a known Communist illegal as against public policy, does it not also invalidate other contracts? Thus, can a landlord break his lease with a Communist on the ground that his building may be sabotaged? Can a buyer refuse to accept and pay for goods purchased from a Communist on the ground that they may contain cleverly concealed defects. Can a seller refuse to deliver goods sold to a Communist on the ground that they may be used to promote communist activities? Can an owner refuse to pay for construction work by a licensed contractor who is a Communist? Indeed, can a Communist be licensed as a contractor? If contracts with Communists are illegal, cannot Communists themselves violate them with impunity?

If breaches of contract can be defended on the ground that one of the parties is a Communist, certainly a hearing will not be denied the alleged Communist on the issue of whether or not he is a Communist. The communist problem, which the court has thus injected into private litigation, may therefore dominate all such litigation and become one of the principal preoccupations of courts. To what end? Certainly private litigation does not lend itself to the formulation of a solution to the problem of what to do with Communists. It is a rash assumption that Congress and the [fol. 724] Legislature have been inept in their consideration of the problem, or are incapable of meeting it, or that astride the "unruly horse" of public policy (*National Auto Ins. Co. v. Winter*, 58 Cal. App. 2d 11, 22 [136 P. 2d 22]) courts are better able to meet it.

It is at once apparent that the controversy now before us presents an even stronger case for refusal to confirm the award than was involved in the Loving & Evans and in the Franklin cases. There the illegality was held to exist in the contracts upon which the awards were based, while here the very award itself is illegal in that it orders reinstatement as an employee of one whose dedication to and active support of Communist principles and practices stands proved and unchallenged in the record. As is hereinafter shown, the true implications of knowing membership in and support of the Communist Party are no longer open to doubt, and the long overworked party line theme that Communism is but a political activity has been exposed as a false and fraudulent stratagem designed particularly as a device for securing, in the free nations having government by law, legal support for the "party" in carrying on to the end of its illegal objectives.

The Congress of the United States, in adopting the Internal Security Act of 1950, declared the dangers of the [fol. 712] Communist movement in the following terms (Act of Sept. 23, 1950, ch. 1024, tit. I, § 2, 64 Stats. 987; 50 U.S.C.A. § 781):

"As a result of evidence adduced before various committees of the Senate and House of Representatives, the Congress finds that—

(1) There exists a world Communist movement which in its origins, its development, and its present practice, is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization.

"(2) The establishment of a totalitarian dictatorship in any country results in the suppression of all opposition to the party in power, the subordination of the rights of individuals to the state, the denial of fundamental rights and liberties which are characteristic of a representative form of government, such as freedom of speech, of the

It is obvious that Cutter cannot properly invoke public policy on its own behalf. Doris Walker's work was satisfactory and her union activities were consistent with legitimate trade-union objectives. Her presence at Cutter presented at most a threat that she might attempt to use her position for subversive activities. That risk, however, was one that Cutter itself did not consider serious enough to disqualify her for employment, and it has been materially lessened by the fact that her communism has been thoroughly exposed. As an afterthought, Cutter now uses this threat as an excuse not only for discharging her for lawful union activity in violation of its contract, but for attacking an arbitration award that it had agreed should be "final and binding" upon it. By sanctioning these violations of Cutter's contract this court not only defeats the public policy in favor of employee organization free of employer interference and coercion (Lab. Code, § 923; National Labor Relations Act, 29 U.S.C.A. § 151 et seq.) and the public policy in favor of the settlement of disputes by arbitration (Code Civ. Proc., §§ 1280-1293) but needlessly introduces confusion into a field in which Congress has already undertaken to formulate a workable policy. (50 U.S.C.A. § 781 et seq.)

It is true that there are sensitive areas in which no Communist should be employed. We cannot assume, however, that the security system established by the federal government is not adequate to protect these areas from subversive persons. As the very authorities cited in the majority opinion make clear, neither Congress in enacting subversive control legislation nor the executive department in enforcing it has been insensitive to the nation's security. To date, however, Congress has not seen fit to make mere membership in the Communist Party a crime or to prohibit persons from entering into employment or other contracts with Communists. Similarly, the executive department has not undertaken to prosecute all Communists under the Smith Act. (18 U.S.C.A. § 2385.) It is not the policy of the United States that all Communists are without legal rights and should be interned. So long as they may legally remain at large they should be allowed to earn a living. Even resident enemy aliens, whose ac-

press, of assembly, and of religious worship, and results in the maintenance of control over the people through fear, terrorism, and brutality. . . .

“(9) In the United States those individuals who knowingly and willfully participate in the world Communist movement, when they so participate, in effect repudiate their allegiance to the United States, and in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement. . . .

“(15) The Communist movement in the United States is an organization numbering thousands of adherents, rigidly and ruthlessly disciplined. Awaiting and seeking to advance a moment when the United States may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits, that overthrow of the Government of the United States by force and violence may seem possible of achievement, it seeks converts far and wide by an extensive system of schooling and indoctrination. Such preparations by Communist organizations in other countries have aided in supplanting existing governments. The Communist organization in the United States, pursuing its stated objectives, the recent successes of Communist methods in other countries, and the nature and control of the world Communist movement itself, present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States.”

And in the Smith Act (Act of June 25, 1948, ch. 645, 62 Stats. 808; 18 U.S.C.A. § 2385) it was provided that “Whoever knowingly or willfully advocates, abets, advises, or teaches the . . . overthrowing or destroying the government of the United States or . . . of any State

... by force or violence, or . . . Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who . . . encourage the overthrow or destruction of any such government by force or violence; or become ~~or is~~ a member of, or affiliates with, any such . . . assembly of persons, knowing the purposes thereof" is guilty of a crime.

More recently, in adopting the Communist Control Act of 1954 (Public Law 637, ch. 886, approved August 24, 1954), our Congress further expressed its, and necessitates our, awareness of the true nature of the party program and methods, in these findings of fact: "Sec. 2. The Congress hereby finds and declares that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States. It constitutes an authoritarian dictatorship within a republic, demanding for itself the rights and privileges accorded to political parties, but denying to all others the liberties guaranteed by the Constitution. Unlike political parties, which evolve their policies and programs through public means, by the reconciliation of a wide variety of individual views, and submit those policies and programs to the electorate at large for approval or disapproval, the policies and programs of the Communist Party are secretly prescribed for it by the foreign leaders of the world Communist movement. Its members have no part in determining its goals, and are not permitted to voice dissent to party objectives. Unlike members of political parties, members of the Communist Party are recruited for indoctrination with respect to its objectives and methods, and are organized, instructed, and disciplined to carry into action slavishly the assignments given them by their hierarchical chieftains. Unlike political parties, the Communist Party acknowledges no constitutional or statutory limitations upon its conduct or upon that of its members. [fol. 714] The Communist Party is relatively small numerically, and gives scant indication of capacity ever to attain its ends by lawful political means. The peril inherent in its operation arises not from its numbers, but from its failure to acknowledge any limitation as to the

tivities have not been restricted by Congress or the President, may engage in time of war in ordinary activities [fol. 725] and make binding contracts of employment or other contracts. (*Ex parte Kawato*, 317 U.S. 69, 74 [63 S.Ct. 115, 87 L.Ed. 58]; *Heiler v. Goodman's Motor Express Van & S. Co.*, 92 N.J. 415 [105 A. 233, 235-236, 3 A.L.R. 336]; *Techt v. Hughes*, 229 N.Y. 222, 239 [128 N.E. 185, 11 A.L.R. 166]; *State v. Darwin*, 102 Wash. 402 [173 P. 29, 30-31, L.R.A. 1918F 1012].)

It must be obvious that in passing on the validity of ordinary employment contracts in litigation between private parties, courts are in no position effectively to evaluate the security factors that should determine what jobs Communists should or should not hold. In its finding of necessity for the enactment of the Internal Security Act of 1950 (50 U.S.C.A. § 781 et seq.) Congress demonstrated its awareness of the communist problem and specifically established in that act the policy of the United States with respect to the employment of Communists. It did not prohibit all hiring of Communists nor did it leave to the courts the decision as to what jobs Communists might hold. It provided instead that the Secretary of Defense should determine and designate the defense facilities in which members of Communist-action organizations should not be employed.* Cutter has not been so designated, and we may therefore assume that the employment of a Communist at Cutter poses no threat

*Section 784(a) of the act provides that "When a Communist organization . . . is registered or there is in effect a final order of the [Subversive Activities Control] Board requiring such organization to register, it shall be unlawful—(1) For any member of such organization . . . (D) if such organization is a Communist-action organization, to engage in any employment in any defense facility." Section 784(b) provides that "The Secretary of Defense is authorized and directed to designate and proclaim . . . a list of facilities . . . with respect to the operation of which he finds and determines that the security of the United States requires the application of the provisions of subsection (a) of this section."

nature of its activities, and its dedication to the proposition that the present constitutional Government of the United States ultimately must be brought to ruin by any available means, including resort to force and violence. Holding that doctrine, its role as the agency of a hostile foreign power renders its existence a clear, present and continuing danger to the security of the United States. It is the means whereby individuals are seduced into the service of the world Communist movement, trained to do its bidding, and directed and controlled in the conspiratorial performance of their revolutionary services. Therefore, the Communist Party should be outlawed."

A similar awareness was shown by the President of the United States in his State of the Union message delivered before a joint session of the Senate and the House of Representatives on January 7, 1954 (100 Congressional Record 62, H. Doc. 251), wherein he declared, "The subversive character of the Communist Party in the United States has been clearly demonstrated in many ways, including court proceedings. We should recognize by law a fact that is plain to all thoughtful citizens—that we are dealing here with actions akin to treason—that when a citizen knowingly participates in the Communist conspiracy he no longer holds allegiance to the United States."

And in this state the courts have recognized that the type of activity found by the board here to have been engaged in by Mrs. Walker—i.e., membership "in the Communist Party with the full implications of dedication to sabotage, force, violence and the like, which Party membership is believed to entail"—constitutes a violation of the California Criminal Syndicalism Act. (Pen. Code, §§ 11400-11402, formerly Deering's Gen. Laws, Act 8428; see *People v. McCormick* (1951), 102 Cal. App. 2d Supp. 954, 962 [228 P. 2d 349]; *People v. Chambers* (1937), 22 Cal. App. 2d 687, 709-713 [72 P. 2d 746].)

The Legislature of California itself has found as facts, and has so declared in section 1027.5 of the Government Code, that "... (a) There exists a world-wide revolutionary movement to establish a totalitarian dictatorship based upon force and violence rather than upon law.

"(d) Within the boundaries of the State of California

to the security of the country. I see no evidence of congressional incompetence or of executive negligence in this respect, nor do I see any evidence of superior wisdom, facilities, or techniques available to this court that would justify its intrusion into policy making in this field. It is my opinion that we can still safely leave to the legislative branch of the government the formulation of policies for the security of the country, and I would therefore affirm the judgment.

Gibson, C. J., and Carter, J., concurred.

[fol. 726] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

S.F. No. 8522

IN THE MATTER OF THE PETITION OF MABEL BLACK AND T. Y. WULFF, in a Representative capacity for, by and on behalf of Bio-Lab Union of Local 225, United Office and Professional Workers of America its officers and members, for an order confirming an award in arbitration, Petitioners and Respondents

vs.

CUTTER LABORATORIES, (a corp.) Respondent, Adverse Party and Appellant

On appeal from the Superior Court in and for the City and County of San Francisco

Superior Court No. 402101

JUDGMENT—Jan. 18, 1955

The above entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It is Ordered, Adjudged, and Decreed by the Court that the Judgment of the Superior Court in and for the

[fol. 715] there are active disciplined communist organizations presently functioning for the primary purpose of advancing the objectives of the world communist movement, which organizations promulgate, advocate, and adhere to the precepts and the principles and doctrines of the world communism movement. These communist organizations are characterized by identification of their programs, policies, and objectives with those of the world communism movement, and they regularly and consistently cooperate with and endeavor to carry into execution programs, policies and objectives substantially identical to programs, policies, and objectives of such world communism movement. . . .

"There is a clear and present danger, which the Legislature of the State of California finds is great and imminent, that in order to advance the program, policies and objectives of the world communism movement, communist organizations in the State of California and their members will engage in concerted effort to hamper, restrict, interfere with, impede, or nullify the efforts of the State and the public agencies of the State to comply with and enforce the laws of the State of California."

Further evidencing the implications of membership in the Communist Party and the policy of the state in respect thereto, the Legislature has declared that (Gov. Code, § 1028): "It shall be sufficient cause for the dismissal of any public employee when such public employee advocates or is knowingly a member of the Communist Party or of an organization which during the time of his membership he knows advocates overthrow of the Government of the United States or of any state by force or violence." (See also *Board of Education v. Wilkinson* (1954), 125 Cal. App. 2d 100 [270 P. 2d 82].) [2] A private employer, particularly one largely engaged in supplying manufactured products to the government, to its armed forces, and to retailers for distribution through hospitals and doctors to the public at large, should not be required by state action through its courts (see *Shelley v. Kraemer* (1948), 334 U.S. 1 [68 S.Ct. 836, 92 L.Ed. 1161, 3 A.L.R.2d 441]; *Hurd v. Hodge* (1948), 334 U.S. 24 [68 S.Ct. 847, 92 L.Ed. 1187]), to retain in or restore to

City and County of San Francisco in the above entitled cause, be and the same is hereby reversed and the cause remanded for further proceedings not inconsistent with the views herein expressed.

Appellant to recover costs on appeal.

I, William I. Sullivan, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 18th day of January, 1955, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office, this 18th day of February, A.D. 1955.

William I. Sullivan, Clerk, by Paul Dinoia, Deputy.

[fol. 727]

[File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

[Title omitted]

PETITION BY RESPONDENT FOR REHEARING—Filed Feb. 1, 1955

[fol. 728]

Point One

The decision gravely undermines the foundations of the arbitration system, both labor and commercial, by laying down the novel and untenable proposition that a reviewing court has power to review the merits of an arbitration controversy, substitute its judgment for that of the arbitrators, and vacate an arbitration award with respect to a matter clearly within the scope of a valid submission agreement.

The decision of the court endangers the entire system of arbitration in California. Arbitration has grown to its present great importance because it offers the parties a means of settling disputes which, by comparison with litigation, is speedy, inexpensive, informal, expert and above all, final and binding, save for the extremely limited court

employment a person who would not be entitled to state employment and who is known to have dedicated herself to the service of a foreign power and to the practice of sabotage to the end of overthrowing our government.

Graphically depictive of the nature of the Communist conspiracy and of the extremes to which it is prepared [fol. 716] to resort are the following statements by Mr. Justice Jackson, concurring in *Dennis v. United States* (1951), 341 U.S. 494, 564-565 [71 S.Ct. 857, 95 L.Ed. 1137, 1181]: "The Communist Party, nevertheless, does not seek its strength primarily in numbers. Its aim is a relatively small party whose strength is in selected, dedicated, indoctrinated, and rigidly disciplined members. From established policy it tolerates no deviation and no debate. It seeks members that are, or may be, secreted in strategic posts in transportation, communications, industry, government, and especially in labor unions where it can compel employers to accept and retain its members. It also seeks to infiltrate and control organizations of professional and other groups. Through these placements in positions of power it seeks a leverage over society that will make up in power of coercion what it lacks in power of persuasion.

"The Communists have no scruples against sabotage, terrorism, assassination, or mob disorder; but violence is not with them, as with the anarchists, an end in itself. The Communist Party advocates force only when prudent and profitable. Their strategy of stealth precludes premature or uncoordinated outbursts of violence, except, of course, when the blame will be placed on shoulders other than their own. They resort to violence as to truth, not as a principle but as an expedient. Force or violence, as they would resort to it, may never be necessary, because infiltration and deception may be enough.

"Force would be utilized by the Communist Party not to destroy government but for its capture. The Communist recognizes that an established government in control of modern technology cannot be overthrown by force until it is about ready to fall of its own weight. Coordinated uprising, therefore, is to await that contingency

review conferred by Sections 1288 and 1289 of the Code of Civil Procedure. These advantages of arbitration are especially important in labor disputes, where the issue is frequently the right of the laborer to his job, and there is neither time nor money available to indulge in the luxury of extended litigation.

The decision of the court, rejecting precedents of long standing (see *Pacific Vegetable Oil Corp. v. C.S.T. Ltd.*, (1946) 29 Cal 2d 228), and numerous other cases cited in [fol. 729] respondent's brief), adds a new and unprecedented ground for vacating an arbitrator's award—disagreement with the judgment of the arbitrator with respect to the merits of the dispute. It is true that the Court seemingly places its decision on the ground that "the arbitrators exceeded their powers" (Sec. 1288(d) Code of Civil Procedure). That section, however, has always hitherto been regarded as applicable only to an award which went beyond the terms of the submission agreement. It is true that in *Loving & Evans v. Blick*, 33 Cal (2d) 603, the section was held to authorize the vacating of an award based on an illegal contract, arguably a tenable interpretation of Section 1288(d). But in the instant case it is not, cannot, be contended that the underlying contract, the collective bargaining agreement in which both parties agreed that the arbitrator's decision was to be "final and binding", is illegal. Hence, the decision of the majority can only be interpreted as sanctioning the judicial upsetting of arbitration awards whenever a court disagrees with the premises or conclusions of the arbitrator. This is a far cry from the principle, [fol. 730] heretofore prevailing, that even mistake of law is no ground for setting aside an arbitrator's decision. See *Sapp v. Baunfeld* (1949) 34 Cal 2d 515, 523, and cases cited).

The invocation of public policy does not justify the majority's departure from statutory authority. The arbitration statute, which lists the grounds of judicial review, does not specify that a court may vacate an award if, in its opinion, contrary to that of the arbitrator, public policy requires it. There are many "public policies" involved directly or indirectly in the present dispute, in-

and revolution is seen, not as a sudden episode, but as the consummation of a long process."

Other instances of recognition by the courts of the clear and present danger to this country and to its institutions presented by the Communist Party and its adherents may be found in decisions upholding the provisions of the Labor Management Relations Act of 1947, also known as the Taft-Hartley Act, (Act, June 23, 1947, ch. 120, § 1 et seq.; 61 Stats. 136 et seq.; 29 U.S.C.A. § 141 et seq.), which deny the privilege of being chosen as exclusive bargaining agent to a union whose officers have not filed with the National Labor Relations Board their affidavits denying membership or affiliation with the Communist Party [fol. 717] and denying belief in the overthrow of the United States Government by force (see *American Communications Assn. v. Douds* (1950), 339 U.S. 382 [70 S.Ct. 674, 94 L.Ed. 925]; *National Maritime Union of America v. Herzog* (D.C., 1948), 78 F.Supp. 146, affirmed 334 U.S. 854 [68 S.Ct. 1529, 92 L.Ed. 1776]; *Inland Steel Co. v. National Labor Relations Board* (C.C.A. 7, 1948), 170 F.2d 247, 264-267, affirmed 339 U.S. 382 [70 S.Ct. 674, 94 L.Ed. 925]), as well as in cases sustaining other legislation or Congressional inquiry directed at exposing and controlling Communist activities in this country. (See *Lawson v. United States* (C.C.A., D.C., 1949), 176 F.2d 49, certiorari denied, 339 U.S. 934, 70 S.Ct. 663 [94 L.Ed. 1352]; *United States v. Dennis* (C.C.A., 2, 1950), 183 F.2d 201, 212-213, affirmed, *Dennis v. United States* (1951), *supra*, 341 U.S. 494 [71 S.Ct. 857, 95 L.Ed. 1137]; *Barsky v. United States*, (C.C.A., D.C., 1948), 167 F.2d 241, 247, certiorari denied, 334 U.S. 843 [68 S.Ct. 1511, 92 L.Ed. 1767]; *Galvan v. Press* (1953), 347 U.S. 522, 529 [74 S.Ct. 737, 98 L.Ed. 911].) In the *Douds* case, *supra*, the court pointed out that before enacting the Taft-Hartley Act "Congress had a great mass of material before it which tended to show that Communists and others proscribed by the statute had infiltrated union organizations not to support and further trade union objectives, including the advocacy of change by democratic methods, but to make them a device by which commerce and industry might

be disrupted when the dictates of political policy required such action." (P. 389 of 339 U.S.) .

Also relevant are the following comments of the court in *Garner v. Board of Public Works* (1950), 98 Cal. App. 2d 493, 498 [220 P.2d 958], affirmed, (1951), 341 U.S. 716 [71 S.Ct. 909, 95 L.Ed. 1317], in upholding an ordinance requiring a loyalty oath for municipal employees: "One of the foundation stones of private business is that the employee must be loyal to his employer. Loyalty is implicit in the contract of hiring. No private business can long succeed without the conscientious, undivided support of its employees. The man or woman who denies allegiance to his employment is, and should be, soon separated from it. . . . And, so long as the employment continues, every employer has the right at any time to ask his employee to declare his loyalty." To the same effect is the holding in *National Labor Relations Board v. International Brotherhood of Electrical Workers* (1953), 346 U.S. 464, 472 [74 S.Ct. 172, 98 L.Ed. 195], "There is no more elemental cause for discharge of an employee than disloyalty [fol. 718] to his employer." (See also *National Labor Relations Board v. Jones & Laughlin Steel Corp.* (1937), 301 U.S. 1, 45-46 [57 S. Ct. 615, 81 L. Ed. 893, 108, A.L.R. 1352]; *RKO Radio Pictures, Inc. v. Jarrico* (1945),¹ 128 Cal. App. 2d — [274 P. 2d 928].) [3] From the array of congressional and legislative findings which have been quoted above, if not from the common knowledge of mankind, it must be accepted as conclusively established that a member of the Communist Party cannot be loyal to his private employer as against any directive of his Communist master.

[4] We are of the view, further, that the type of activity engaged in by the employee here—membership in the Communist Party and sustained participation in its activities—is one which as a matter of public policy the company should not be held to have waived by its failure to discharge her earlier than it did. [5] in the first place, it is an established principle that parties cannot be estopped from relying on defenses based on considerations of public policy, such as illegal contracts. (See *Fewel & Dawes, Inc., v. Pratt* (1941),

¹ Advance Report Citation: 128 A.C.A. 201.

cluding the policy against discrimination by employers because of union activities, the policy in favor of the finality of arbitration awards, etc. Sharp differences of opinion are possible with respect to the weight and effect which ought to be given to these various, and possibly conflicting, public policies, as the decisions of the arbitrators, the Superior Court, the unanimous District Court of Appeal clearly demonstrate. The statute does not authorize a court to substitute its judgment for that of the arbitrator with respect to the public policy to be applied, any more than it authorizes the court to reject the arbitrator's opinion because of a different opinion [fol. 731] as to the law, the facts, or the amount or content of the award.

While in this case, the public policy relied on by the Court is the popular anti-Communist issue, there is nothing in the opinion which negates the utilization of other policy grounds as justification for upsetting the decisions of arbitrators. The decision opens wide the door to judicial interference with arbitration awards in fields such as reinstatement of discharged employees, strikes, picketing, etc.—in short, wherever and whenever a reviewing court disagrees with the result and is in a position to cite public policy reasons in support of its disagreement. Instead of certainty, the result is uncertainty. Instead of finality, the consequence is to convert the award into the first step in a lengthy and expensive process of litigation—as was true in the instant case. The Court should not adhere to a decision productive of such pernicious results.

[fol. 732]

Point Two

The decision deprives petitioner, its officers and members, including Doris Walker, of liberty and property without due process of law.

- (1) *The right to engage in the ordinary vocations of life is part of the liberty protected by the Fourteenth Amendment.*

The due process clause of the 14th Amendment protects "any person" in the United States against arbitrary deprivation of life, liberty or property.

Communists are persons.

In his famous dissenting opinion in the *Slaughter-House Cases* (1872) 83 U.S. (16 Wall.) 36, 116, 122, Justice Bradley declared, apropos of the right to engage in the butcher business:

"This right to choose one's calling is an essential part of that liberty which it is the object of government to protect; and a calling, when chosen, is a man's property and right."

And further:

"... a law which prohibits a large class of citizens from following a lawful employment previously adopted, does deprive them of liberty, as well as property, without due process of law."

The minority opinion in the *Slaughter-House Cases* became law in *Allgeyer v. Louisiana* (1897) 165 U.S. 578, [fol. 733] 589; where the court held that

"The liberty mentioned in that (Fourteenth) Amendment ... is deemed to embrace the right of the citizen ... to live and work where he will; to earn his livelihood in any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

In *Coppage v. Kansas* (1915) 236 U.S. 1, 14, the court held:

"Included in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense."

And in *Meyer v. Nebraska* (1923) 262 U.S. 390, 399, it was said that the liberty guaranteed by the 14th Amendment "without doubt" embraced the right of the individual "to contract, to engage in any of the common occupations of life."

While Doris Walker happened to be employed as a clerk-typist for a pharmaceutical firm, there is nothing in the logic of the majority—as the dissenting opinion points out—which suggests that its application is confined to any particular kinds of employment. A statute [fol. 734] dealing with the employment of Communists could be—indeed, from the standpoint of constitutionality would have to be—carefully drawn so as to indicate the precise areas from which Communists are banned. The Internal Security Act of 1950 (50 U.S.C. Sec. 781, et seq.) attempts to meet this requirement by instructing the Secretary of Defense to draw up a list of facilities essential to national security, from which Communists are to be excluded. Presumably, Communists are free to seek and hold employment in other fields. But the majority opinion makes no such distinction. Its public policy pronouncements are broad and vague enough to apply to every butcher, baker and candlestick maker, since a Communist in the employ of any of them, according to the logic of the majority opinion, might put poison in the meat, ground glass in the bread, or concealed explosives in the candlesticks. In short, the majority opinion does not merely deny to Communists the right to work in a limited number of "sensitive" areas, leaving them free to earn their living throughout the rest of the economy. Instead, it puts all employers on notice that they are liable in damages to anyone who sustains injury as the result of keeping a Communist in their employ, and thus invites, nay [fol. 735] practically commands, that they discharge anyone whom they have reason to believe is a Communist, union agreements to the contrary notwithstanding. It would be difficult to imagine a more extreme deprivation of liberty and property without due process of law.

- (2) *Due process of law is violated by this Court's reliance on matters dehors the record, and not properly the subject of judicial notice, without giving respondent an opportunity to be heard with respect to such matters.*

The majority opinion (p. 17) asserts that "the true implications of knowing membership in and support of the Communist Party are no longer open to doubt", and recites, as a matter of "common knowledge", a series of immoral, fraudulent and criminal doctrines and activities to which the Communist Party and, by extension, Mrs. Walker, are supposedly dedicated. Among these are overthrowing the government by force and violence; treachery, deceit, infiltration of government agencies, espionage, terrorism, assassination and sabotage; suppression of fundamental rights such as freedom of political opposition, freedom of speech, assembly and religious worship; masquerading under the guise of a political party as a hoax to screen illegal objectives; subjection [fol. 736] to a foreign power, called "akin to treason".

There was no evidence presented to the Board of Arbitration that the Communist Party was dedicated to any part of such a program and, a fortiori, no evidence that Mrs. Walker believed in or practised any of these things.

The only finding of the arbitrators which may conceivably be construed as supporting the views stated by the majority is the unclear and ambiguous reference to "membership in the Communist Party with the full implications of dedication to sabotage, force, violence and the like, which Party membership is believed to entail", which is immediately followed by the assertion:

"That the Company honestly believed all of these things is admitted and the accuracy of this belief is established in the record as follows . . . by undenied and uncontradicted evidence with respect to the membership in the Communist Party; and by uncontradicted evidence that the Company's beliefs were prevalently understood and shared."

That the language quoted above was intended to constitute a finding that the Communist Party is addicted

to "sabotage, force, violence and the like", and that Mrs. Walker likewise adhered to these things, must be doubted, not only because of the entire absence of evidence on the point, but even more strongly because of the contrary [fol. 737] *specific* finding, based on sworn testimony, that during the entire period of Mrs. Walker's tenure as a union officer, there was no "work stoppage, strike, or other interference with production the avowed objective of which was political, philosophical, subversive or revolutionary."

The most probable and natural interpretation of this unclear declaration regarding "sabotage, force, violence and the like" is that the arbitrators intended to convey the idea that *the Company's beliefs* as to the implications of Communist Party membership were honestly held, as indicated, among other things, by the fact that these beliefs "were prevalently understood and shared", i. e. that a great many other persons were of the same opinion. The reference to the "accuracy" of the Company's beliefs cannot have been meant as a finding that the beliefs were actually true, since the reference is followed by a recitation of the evidence which demonstrates that "accuracy", one of which relates to proof of "sabotage, force, violence and the like". Hence it is most likely that the word "accuracy" was used in a sense akin to "reasonableness" or "plausibility". The entire tenor of the arbitration opinion sup-[fol. 738] ports this interpretation, including the fact that the arbitrators, mature, experienced and responsible men, ordered the Company to take Mrs. Walker back into its employ.

In any event, the views expressed by this Court as to the "full implications" of Communist Party membership go far beyond anything stated in or inferable from the award. The Court's detailed and voluminous recital of the alleged Communist policy, strategy and tactics derives neither from evidence in the record or findings of the arbitrators. It purports to reflect matters of common knowledge, hence subject to judicial notice. It is submitted that the Court's action in this regard constitutes a misuse of the doctrine of judicial notice and a deprivation of procedural due process of law.

1. The majority opinion fails to mention *Communist Party v. Peck* (1942) 20 Cal. 2d 536, 546-548, where the Court in a carefully reasoned opinion, held that the alleged advocacy by the Communist Party of overthrow of government by force and violence cannot be the subject of judicial notice. The reasons which were the basis of that opinion are just as valid today as they were in 1942. It is still true that the doctrines of the Communist Party are botly dis-[fol. 739] puted—witness the lengthy Smith Act trials in which the entire record is filled with sharply opposed quotations and interpretations of Communist Party doctrine. It is still true that to hold that the Court may take judicial notice that the Communist Party advocates violent overthrow of the government could make every enrolled Communist a felon upon mere proof of membership. As the Court then forcefully declared: "That is not the law."

The impropriety of judicial notice in this field is further demonstrated by *Schneiderman v. United States* (1943) 320 U. S. 118. There the court pointed out that it was by no means clear that advocacy of violent overthrow of government was a Communist objective. It declared, after a thorough review of Communist literature, that

"A tenable conclusion from the foregoing is that the Party in 1927 desired to achieve its purpose by peaceful and democratic means, and as a theoretical matter justified the use of force and violence only as a method of preventing an attempted forcible counter-overthrow once the Party had obtained control in a peaceful manner, or a method of last resort to enforce the majority will if at some indefinite future time because of peculiar circumstances constitutional channels were no longer open." (*supra*, p. 157).

The Government in the *Schneiderman* case even admitted, with what the Court termed "commendable candor" (p. [fol. 740] 148) "the presence of sharply conflicting views on the issue of force and violence as a Party principle".

Equally pertinent is the Supreme Court's observation that

"under our traditions beliefs are personal and not a matter of mere association, and that men in ad-

hering to a political party or other organization notoriously do not subscribe to all of its platforms or asserted principles." (*ibid*, p. 136)

Hence, even if judicial notice could be taken of the Communist Party's alleged advocacy of force, violence, etc., it would be impermissible to infer Mrs. Walker's personal views from such notice.

2. As has been pointed out, the Court's lengthy and detailed exposition of asserted Communist doctrines and practices was not an issue on which evidence was offered or introduced in the arbitration proceedings, was not set forth in the findings, and was not discussed in the opinions of either of the courts below. Its appearance in the majority opinion constitutes the first occasion on which respondent has been put on notice that the doctrines of the Communist Party are regarded by an adjudicating body as a material issue in the case. Respondent has never had a proper opportunity to present evidence in rebuttal [fol. 741] of the views presented in the Court's opinion, and has therefore been deprived of due process of law. *Saunders v. Shaw* (1916) 244 U.S. 317.

The deprivation of due process would not be any the less if, contrary to what has been argued above, the subject were one of which judicial notice could properly be taken.

"... to press the doctrine of judicial notice to the extent attempted in this case and to do that retroactively after the case had been submitted, would be to turn the doctrine into a pretext for dispensing with a trial . . . Moreover, notice, even when taken, has no other effect than to relieve one of the parties to a controversy of the burden of resorting to the usual forms of evidence . . . It does not mean that the opponent is prevented from disputing the matter by evidence if he believes it disputable."

Ohio Bell Tel. Co. v. Public Utilities Comm. (1936) 301 U.S. 292, 301-302.

The denial to respondent of any opportunity to dispute the matters judicially noticed by the Court—matters which are decidedly disputed so far as respondent is concerned—

violates the due process clause of the Fourteenth Amendment.

[fol. 742] Point Three

The Decision Denies to Petitioners, its Officers and Members, including Doris Walker, the Equal Protection of the Laws:

That denial of equal protection of the laws may result from judicial action by a State court is no longer open to question. *Shelley v. Kraemer* (1948) 334 U.S. 1; *Barrows v. Jackson* (1953) 346 U.S. 249.

The decision in the instant case bases itself upon the assumption, derived principally from legislative findings, that the Communist Party teaches and practices forceful overthrow of the government, sabotage, etc.

Legislative findings of the kind relied on by the Court are not a constitutional substitute for judicial proof. When, in *Communist Party v. Peck* (1942) 20 Cal. 2d 536, 548, 549, it was claimed that the legislature had made an implied finding that the Communist Party advocated violent overthrow of the government, this Court declared:

"It is said that this implied legislative finding, even though on a controversial issue, is binding on the courts. To state the contention is to refute it. Aside from the fact that it is not the function of the legislature to determine whether a statute declaring a general policy has been violated in a particular case, that being a judicial function, it is clear that a statute which purports to determine that a particular group has violated a general law is special in nature and violates [fol. 743] article IV, section 25, subdivision 11, of the Constitution . . .

And further:

"The legislature is without power to determine that a particular person or group has violated the doctrine which violates the policy laid down in the statute. If the statute be interpreted to include the implied finding here in question, as contended by defendants, it would mean that the legislature had determined that a special group had violated the general policy

of the statute. Such legislation would clearly be unconstitutional . . . It follows that, while the legislature may properly deny a place on the ballot to any party advocating the forceful overthrow of the government, it may not, constitutionally, determine that a specific party advocates the doctrine in question without running afoul of the constitutional provision above quoted."

While uttered with respect to the "special legislation" provision of the State Constitution (Art. IV, Section 25), the quoted words are just as pertinent to the equal protection clause of the Fourteenth Amendment. That clause forbids State action, whether legislative or judicial, which classifies persons or groups on an unfair, arbitrary or unreasonable basis. *Shelley v. Kraemer, supra*; *Yick v. Hopkins* (1886) 118 U.S. 356; *Takahashi v. Fish & Game Com'n.* (1948) 334 U.S. 410.

Communists, even so-called "dedicated" Communists, [fol. 744] are human beings. It cannot be assumed that they do not differ among themselves with respect to matters of doctrine and its application. See *Schneiderman v. United States* (1943) 320 U.S. 118. A rule of law which assumes, without valid proof, that every member of the Communist Party is ready, upon "the bidding of (his) foreign master" (p. 31) to commit such monstrous crimes as treason, assassination, sabotage, etc., is surely a reflection of the political passions of the moment, rather than of the traditional American insistence that guilt is individual, not based upon association. A holding which assumes, without legal evidence, that all Communists hold such abhorrent beliefs constitutes an arbitrary, unfair and unreasonable classification, and hence is a denial of equal protection of the laws.

Equally violative of the equal protection clause is the discriminatory purpose of the holding. Its aim, or at least its ineluctable effect, is to deny to Communists, and Communists alone, the right to earn their daily bread in industry and to receive the benefit of union contracts which protect that right. As was shown in the discussion of due process, the effect of the rule is the virtual exclusion

[fol. 745] of Communists from most areas of employment. Since no emergency, no "pressing public necessity" (*Korematsu v. United States* (1946) 323 U.S. 214, 216) dictates such an extreme measure—neither Congress nor the President has found it necessary to take such a step—it can only be concluded that the decision was motivated by hostility to Communists and antagonism to their cause. But such motivation is forbidden by the equal protection clause. The United States Supreme Court has held that, at least when touching civil rights, legislation must be based on more than prejudice against a particular group. In *Yick Wo v. Hopkins*, *supra*, the discrimination struck down was one for which no reason existed "except hostility to the (Chinese) race and nationality" and which, therefore, "in the eye of the law is not justified" (*supra*, at 374). In *Truax v. Raich* (1915) 239 U.S. 33, 41, Mr. Justice Hughes, dealing with an Arizona statute which barred aliens from employment, said that

"It is no answer to say, as it is argued, that the act proceeds upon the presumption that the employment of aliens unless restrained was a peril to the public welfare. The discrimination against aliens in the wide range of employment to which the act relates is made an end in itself."

In *Korematsu v. United States* (1944) 323 U.S. 214, 216, [fol. 746] the court states emphatically that "racial antagonism" can never justify restrictions on civil rights. And in *Kotch v. Board of River Pilot Commissioners* (1947) 330 U.S. 552, 556, Mr. Justice Black, speaking for the Court, declared that, while the equal protection clause permits reasonable classification,

"Clearly, it might offend that constitutional safeguard if it rested on grounds wholly irrelevant to the achievement of the regulation's objectives. An example would be a law applied to deny a person a right to earn a living or hold any job because of hostility to his particular race, religion, beliefs, or because of any other reason having no reasonable relation to the regulated activities."

And so in the instant case. A statute narrowly drawn to deny Communists the right to work in certain designated "sensitive" industries, while leaving them to seek employment elsewhere, would be less offensive to the guarantee, although its constitutionality is not conceded. In contrast, the broad public policy pronouncements of the Court not only deny Communists the same opportunity to make a living as other groups but practically bar them from the State of California, since, as the Supreme Court noted in *Truax v. Raich, supra*, at 42, people "cannot live where they cannot work". This is discrimination, not reasonable, but onerous, and offends the constitutional injunction that all persons are entitled to the protection of equal laws.

The *Yick Wo*, *Truax*, *Korematsu* and other cases cited above involved, it is true, discrimination based upon race, color and ancestry, rather than political affiliations. But it is submitted that the principle which underlies the cited cases applies just as clearly to the members of a political group whose "views are so extremely unpopular with a vastly preponderant majority of the citizenry of our country as to amount virtually to an anathema in the public mind." *Commonwealth v. Nelson* (1954) 104 A.2d 133, 135, 377 Pa. 58. Cf., *American Sugar Refining Co. v. Louisiana* (1900) 179 U.S. 89, 92.

"... if such discrimination were purely arbitrary, oppressive or capricious, and made to depend upon differences of color, race, nativity, religious opinions, political affiliations or other considerations having no possible connection with the duties of citizens or taxpayers, such exemption would be pure favoritism, and a denial of the equal protection of the laws to the less favored classes." (Emphasis added)

The government of the United States is, in Marshall's immortal words "a government of laws and not of men". *Marbury v. Madison* (1803) 1 Cr. 137, 163. It does not [fol. 748] authorize a discriminatory classification which assumes, against experience, that all members of a political group have the same understanding of a complicated body of doctrine, that all are actual or potential

criminals, and that all must be denied the right to work in ordinary occupations in order to save the country and its institutions.

[fol. 749]

Point Four

By Construing Certain Recently Enacted Statutes as Establishing a Public Policy Which Deprives Petitioners of Their Right to Enforce a Previously Valid Contract, Entered Into Before the Enactment of Those Statutes and Valid and Enforceable When Entered Into, the Court Has Made of Those Statutes, as Construed and Applied, a Law Impairing the Obligation of Contracts, in Violation of Article I, Section 10 of the United States Constitution

It is not here contended that any person has a vested interest that the law laid down in previous decisions shall remain unchanged. Nor is it contended that the mere fact that a court decision denies enforcement to a contract is sufficient, in and of itself, to give rise to a federal constitutional question.

Here, however, the contract was entered into on June 23, 1948. Mrs. Walker was an employee at that time, entitled to rights conferred on the employees by the contract. She was discharged on October 16, 1949, and her right to invoke the remedy set out in the contract vested on that date.

The Court does not hold that the contract was invalid and unenforceable when entered into, nor that it was invalid or [fol. 750] unenforceable on October 16, 1949. Its opinion predicates the denial of remedy on a "public policy." This public policy was not in existence on October 16, 1949, and could not have been, because it is based on the findings recited in state and federal legislation enacted after that date.

The Court does refer to two statutes enacted prior to the date of Mrs. Walker's discharge: the federal Smith Act and the state criminal syndicalism law. Neither of these, however, mentions the Communist Party by name or contains any findings of fact. They could not, therefore, serve as the basis of denying a contractual right to an alleged Communist who had not been convicted of or indicted for violating either of them.

It appears, therefore, that the contractual remedy available to Mrs. Walker on October 16, 1949 has disappeared

because this Court has held that subsequent state and federal legislation should be construed to have this effect.

“ . . . although the state court may have construed the contract and placed its decision distinctly upon its own construction, if it appear, upon examination, that in real substance and effect, force has been given to the statute complained of . . . ”

the jurisdiction of the Supreme Court of the United States attaches. *Columbia Railway v. South Carolina*, 261 U. S. [fol. 751] 236, 245.

“In such a case [the U.S. Supreme Court] accepts the meaning put upon the impairing statute by the state court as authoritative, but it is the statute, as enforced by the state, through its courts, which impairs the contract, not the judgment of the court.” *Tidal Oil Co. v. Flanagan*, 263 U.S. 444, 453.

The provision that “No State shall pass any Law impairing the Obligation of Contracts” means also, that a state cannot “accomplish the same end by granting any permission necessary to enable Congress to do so.” *Ashton v. Cameron County W. 1. Dist.*, 298 U.S. 513, 531.

“The constitutional provision prohibiting a State from passing a law impairing the obligation of contracts equally prohibits a State from enforcing as a law an enactment of that character from whatever source originating.” *Williams v. Bruffy*, 96 U.S. 176, 184.

[fol. 752]

Point Five

The decision gives effect to the Internal Security Act of 1950, the Communist Control Act of 1954, and sections 1027.5 and 1028 of the Government Code as legislative adjudications that Doris Walker is guilty of matters concerning which she has had no judicial trial, and hence makes of these acts "bills of attainder" within the meaning of Article 1, Sections 9 and 10, Constitution of the United States.

The decision of the Court denies contract rights to Mrs. Walker by attributing personal guilt to her in the following respects:

She is said to be "a person . . . who is known to have dedicated herself to the service of a foreign power and to the practice of sabotage to the end of overthrowing our government." (p. 24) It is said to have been "conclusively established that . . . (she) cannot be loyal to (her) private employer as against any directive of (her) Communist master." (p. 27) Her employment would give rise to a "possibility of 'sabotage, force, violence and the like,' " (p. 28), although her employment for the previous three years produced no such developments. Although she has not done so in the past, it is anticipated that she may engage in "wilful adulteration" of the Company's [fol. 753] products. (p. 29) "Acts of sabotage . . . are reasonably to be expected (from her) at any time." (p. 29) She is described as "dedicated to be disloyal to (her employer), to be likewise disloyal to the American labor union (she) may purport to serve, and (to) constitute a continuing risk to both the employing company and the public depending upon the company's products." (p. 29) It is said that she "was not at any time or in any of her activities truly serving the cause of an American labor union of the interests of an American laboring man; she was but doing the bidding and serving the cause of her foreign master . . ." (p. 31).

It is at least intimated that she may have committed a federal felony, violation of the Smith Act (pp. 19-20),

and a state felony, violation of the criminal syndicalism statute. (p. 22)

Mrs. Walker has not had the benefit of a judicial trial on any of these charges. The charges are not based on evidence that Mrs. Walker has herself engaged in any of the activities described. They result solely from applying to Mrs. Walker personally the findings of Congress and of the State Legislature with reference to the Communist Party. The only link between these legislative findings and Mrs. Walker is some evidence in the arbitration proceedings tending to show that she was, or had been, a member of the Communist Party, and the fact that, on advice of counsel (based on a claim of irrelevance), she refused to affirm or deny such membership.

To paraphrase *United States v. Lovett*, 328 U. S. 303, 316-317: "No one would think that Congress (or the state legislature) could have passed a valid law, stating that after investigation it had found Mrs. Walker guilty of dedication to sabotage, etc., and sentencing her to deprivation of the right to enforce employment contracts, or to benefit from arbitration awards. The legislature findings referred to do 'not use that language.' Yet, as construed and applied by the Court, they 'accomplish that result. The effect was to inflict punishment without the safeguards of a judicial trial and 'determined by no previous law or fixed rule.' The Constitution declares that cannot be done either by a state or by the United States."

The expression "bill of attainder", as used in the federal [fol. 755] Constitution, has been defined as follows by the United States Supreme Court:

"A bill of attainder is a legislative act, which inflicts punishment without a judicial trial.

"If the punishment be less than death, the act is termed a bill of pains and penalties. Within the meaning of the Constitution, bills of attainder include bills of pains and penalties. In these cases the legislative body, in addition to its legitimate functions, exercises the powers and office of judge; it assumes, in the language of the text books, judicial magistracy; it pronounces upon the guilt of the party, without any of the forms

or safeguards of trial; it determines the sufficiency of the proofs produced, whether conformable to the rules of evidence or otherwise, and it fixes the degree of punishment in accordance with its own notions of the enormity of the offense. . . .

"These bills are generally directed against individuals by name; but they may be directed against a whole class. . . .

"These bills may inflict punishment absolutely, or may inflict it conditionally."

Cummings v. Missouri, 4 Wall. (71 U. S.) 277, 323-324

This Court, not many years ago, was unanimously of the opinion that passing judgment on a named group was not, any more than passing judgment on a named individual, a legislative function. *Communist Party v. Peek*, 20 C. 2d 536.

Mrs. Walker is here considered guilty of activities and conduct, some of which is criminal and all of which are highly injurious to her reputation and employability, al- [fol. 756] though it is not claimed that even the legislature or Congress received any evidence that she had personally engaged in such activities. This is done by construing legislative findings of guilt directed at a named organization as constituting also legislative findings of guilt against each and every person believed or found to be a member of such organization. This exhibits all the constitutional abuses denounced above in a far more aggravated form than they were found in the cases in which the statements were made.

The applicability of the bill of attainder concept cannot be defeated by a contention that no "punishment" is involved.

"The theory upon which our political institutions rest is, that all men have certain inalienable rights—that among these are life, liberty and the pursuit of happiness; and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to everyone, and that in the protection of these rights all are

equal before the law. Any deprivation or suspension of any of these rights for past conduct is punishment, and can be in no other-wise defined."

Cummings v. Missouri, 4 Wall. (71 U. S.) 377, 321-322
 "... exclusion from any of the professions or any of the ordinary avocations of life for past conduct can be regarded in no other light than as a punishment for such conduct."

Ex parte Garland, 4 Wall. (71 U. S.) 333, 377

[fol. 757] The principles of the *Cummings* and *Garland* cases have been emphatically reaffirmed by the Supreme Court of the United States as recently as 1946:

"Neither of these cases has been overruled. The stand for the proposition that legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution. Adherence to this principle requires invalidation of #304. We do adhere to it."

United States v. Lovett, 328 U. S. 303, 315-316

The only United States Supreme Court case of which we are aware, which might be cited in support of the constitutional validity of what has been done here is *American Communications Association v. Douds*, 339 U. S. 382. Yet, in holding that Congress may withhold the benefits of the National Labor Relations Board from unions whose officers refuse to sign affidavits that they are not Communists, the Court stressed factors which distinguish this case entirely from what was there decided. The Court pointed out that Section 9(h) "does not, however, specifically forbid persons who do not sign the affidavit from holding positions of union leadership nor require their discharge from office." *Id.*, p. 390. The position from which Mrs. Walker was re- [fol. 758] moved was not one of authority which "derives in part from Government's thumb on the scales," nor one

where the exercise of "power by private persons becomes closely akin, in some respects to its exercise by Government itself." *Id.*, p. 401. It is not true of this Court's "public policy," as was said of Section 9(h), that it's "discouragements . . . proceed not against the groups or beliefs identified therein, but only against the combination of those affiliations or beliefs with occupancy of a position of great power over the economy of the country." *Id.*, pp. 403-404. Mrs. Walker, of course, did not occupy "a position of great power over the economy of the country." It is not true of the announced policy that it "touches only a relative handful of persons, leaving the great majority of persons of the identified affiliations and beliefs completely free from restraint." *Id.*, p. 404. Nor does it leave "those few who are affected free to maintain their affiliations and beliefs subject only to possible loss of positions which Congress has concluded are being abused to the injury of the public by members of the described groups." *Id.*, p. 404. Mrs. Walker did not occupy any position which Congress had concluded was being abused. Furthermore, [fol. 759] this Court ascribes to Mrs. Walker, on the basis of her supposed inclusion in a collective legislative finding, criminal and semi-criminal activities. This is a far more serious conclusion than the conclusion that Communist union leaders have a tendency to call political strikes, which is what the Court considered to be the implied finding in the *Douds* case. The *Douds* case thus does not hold that individuals can be considered guilty of crimes for which they have never been tried, if they are found to be members of groups to which Congress has ascribed those particular crimes.

To whittle away the protection of the bill of attainder clause at present on the ground that the current crisis is assumed to be unique, or that Communists are assumed to be uniquely different from those against whom such tactics have been used in the past, would be to deprive the clause of the precise function for which it was intended. The bills of attainder with which the framers of the Constitution were familiar in fact grew out of strikingly similar situations. It was in anticipation that such situations might

arise in the future, and to guard against their leading to [fol. 760] the same abuses, that the clause was inserted.

"Bills of this sort have been most usually passed in England in times of rebellion, or of gross subserviency to the crown, or of violent political excitements; periods, in which all nations are most liable (as well the free as the enslaved) to forget their duties, and to trample upon the rights and liberties of others."

Story on the Constitution (5th Ed., 1891) Sec. 1344.

Still closer to the framers' experience was the rash of bills of attainder to which the colonies resorted during the struggle for independence. Their use arose from the fact that persons who refused to give up their former allegiance to the British crown were regarded as an internal enemy allied with a foreign invader. Thompson, *Anti-Loyalist Legislation During the American Revolution*, 3 Ill. Law Rev. 81 (1908). Under the circumstances, legislatures freely generalized concerning all loyalists that they were persons pursuing "their diabolical plans" and "guilty of such atrocious and unnatural crimes against their country that every friend of mankind ought to forsake and detest them." *Id.*, p. 147.

"It was against the excited action of the States, under such influences as these, that the framers of the Federal Constitution intended to guard" (by the bill of attainder clause).

Cummings v. Missouri, 4 Wall. (71 U.S.) 277, 322.

[fol. 761] "In short, in all such cases, the legislature exercises the highest power of sovereignty, and what may be properly deemed an irresponsible despotic discretion, being governed solely by what it deems political necessity or expediency, and too often under the influence of unreasonable fears or unfounded suspicions."

Story on the Constitution (5th ed., 1891) = 1344.

However it may be rationalized, the substance of the matter is that Mrs. Walker has been found guilty of accusations for which she has had no judicial trial, on the theory that no judicial trial is necessary since the legislative branch has already tried and condemned her.

"The Constitution deals with substance, not shadows. Its inhibition (against bills of attainder) was leveled at the thing, not the name. It intended that the rights of the citizen should be secure against deprivation for past conduct by legislative enactment, under any form, however disguised. If the inhibition can be evaded by the form of the enactment, its insertion in the fundamental law was a vain and futile proceeding."

Cummings v. Missouri, 4 Wall.° (71 U.S.) 277, 325.

[fol. 762]

Point Six

The Decision Violates the Federal Supremacy Clause of the Constitution (Article VI, Section 2)

(1) *Congress has preempted and fully occupied the field of regulation of employment rights of Communists.*

As the dissenting opinion points out, in the Internal Security Act of 1950 (50 U.S.C. Sec. 781 *et seq*) "Congress demonstrated its awareness of the Communist problem and specifically established in that Act the policy of the United States with respect to the employment of Communists."

Congress did not "prohibit all hiring of Communists nor did it leave to the courts the decision as to what jobs Communists might hold. It provided instead that the Secretary of Defense should determine and designate the defense facilities in which members of Communist-action organizations should not be employed."

The Constitution grants to Congress (Art. I, Sec. 8) power "to provide for the common defense," "to declare war," and "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." It cannot be doubted that, within constitutional limits, the [fol. 763] power of Congress to enact laws to protect the security of the United States is so "intimately blended and

intertwined with responsibilities of the national government" that its nature alone raises an inference of exclusion of State action. Cf. *Hines v. Davidowitz*, 312 U.S. 52, 66; *Commonwealth v. Nelson* (1954) 377 Pa. 58, 104 Atl. 2d 133.

The interest of Congress in the question of the employment of Communists in private industry, its concern that there be a precise, uniform, nationwide definition of the extent of and limitations on such employment, is further shown by the history of two measures introduced in the Senate and the House during the last session of Congress. These twin measures (S. 3428 and H.J. Res. 527) sought to broaden and extend greatly the sphere of non-employability of Communists in private industry. The bills failed of passage, because the House Judiciary Committee, in its report on H. J. Res. 527, declared that

"the language of the proposed measure is not sufficiently carefully drawn so as to enhance the security of the United States on the one hand, but not to limit the constitutional rights of individuals on the other hand."

Declaring that it lacked sufficient information on the subject [fol. 764] to enable it to present appropriate legislation to the House for passage, and, rather than recommend "measures hastily drawn and obviously inadequate," the Judiciary Committee went on to urge

"a thorough study by an impartial public commission appointed by the President of the United States should be made so as to give the Congress the benefit of impartial study and expert recommendations."

Thus Congress, charged with the duty of protecting the security of the United States, and having exercised that power to the extent it deemed proper in the Internal Security Act of 1950, *supra*, declined to adopt a sweeping policy of barring Communists from private employment, and undertook to get further information to enable it to act intelligently. The majority of this Court, however, despite the absence of (to quote the dissenting opinion, p. 9) "evidence of Congressional incompetence or of execu-

tive negligence in this respect" or of "superior wisdom, facilities, or techniques available to this court," chose to enact through the method of public policy what Congress had expressly declined to enact through the far more precise and workable method of legislation. In so doing, the Court has trespass[ed] on a field which the Congress, both by its acts and its failure to act, has demonstrated an intention to reserve to itself. The supremacy clause has thereby been violated.

(2) *The decision conflicts with the Policy and provisions of the Labor Management Relations Act, 1947.*

The Labor Management Relations Act, 1947 (29 U.S.C. 141 *et seq.*) amended but did not repeal the National Labor Relations Act. The heart of that Act, Section 7, is still intact. It declares the national policy to be that

"Employees shall have the right to self-organization, to form, join or assist labor organizations, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ."

Implementing the declaration in Section 7 is Section 8(a)(3), which makes it an unfair labor practice for an employer

"by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

The arbitrators in the instant case found, on the basis of ample evidence, that Doris Walker was discharged because of her union activities; that the employer knew all about her alleged Communist activities, and didn't care a fig about them—until he was in a position to use them for the purpose of crippling the union by depriving them [fol. 766], of a chosen leader at a critical moment in labor-management relations.

The discharge of Doris Walker was clearly a "discrimination in regard to . . . tenure of employment." Its purpose

and effect was to "discourage membership in" the union. As such it was a plain violation of Section 8(a)(3) of the National Labor Relations Act.

The action of this Court in declaring, despite the explicit contrary finding of the arbitrators, that the discharge of Doris Walker was not discriminatory and is not remediable, is in direct conflict with the national policy. It is, in effect, an attempted nullification, pro tanto, of Section 8(a)(3), and cannot stand.

The controlling principle is clearly set forth in *Hill v. Florida* (1944) 325 U.S. 538. There a Florida statute sought to require state licensing of union business agents and to impose conditions on the right to act as such. Among the conditions were that a business agent must have been a citizen of the United States for more than 10 years, never convicted of a felony, and of good moral character.

The court pointed out that business agents are the elected collective bargaining representatives of employees and that,

[fol. 767] "The declared purpose of the Wagner Act, as shown in the first section is to encourage collective bargaining, and to protect the 'full freedom' of workers in the selection of bargaining representatives of their own choice. To this end Congress made it illegal for an employer to interfere with, restrain or coerce employees in selecting their representatives. Congress attached no conditions whatsoever to their freedom of choice in this respect. Their own best judgment, not that of someone else, was to be their guide. 'Full freedom' to choose an agent means freedom to pass upon that agent's qualifications." (*Ibid.* at p. 541, emphasis supplied.)

Holding that the statute as construed and applied "substitutes Florida's judgment for the workers' judgment", the court declared that the state and federal acts could not "move freely within the orbits of their respective purposes without impinging upon one another" (*ibid.* at 543). The national law accordingly prevailed.

The *Hill* case establishes the principles that, so long as federal law guarantees "full freedom" to workers to select

their bargaining representatives, neither the employer nor the state can intervene to deny that freedom. There is no tenable distinction between a state law which declares that workers may not choose non-citizens, felons or persons of bad moral character to represent them, and a state court's public policy edict that prevents workers from choosing a Communist to represent them, if they so desire. The [fol. 768] decision of this Court "substitutes [California's] judgment for the workers' judgment" and is in "irreconcilable conflict" with the collective bargaining guarantees of the National Labor Relations Act.

Conclusion

For the reasons stated, it is respectfully requested that the Court grant a rehearing in the cause, and that the judgment of the court below confirming the arbitration award be affirmed.

Edises, Treuhaff, Grossman and Grogan, By Bertram Edises, Attorneys for Petitioners and Respondents.

[fol. 769] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA IN BANK

[Title omitted]

ORDER DENYING REHEARING

Respondents' petition for rehearing denied.

Gibson, C. J. Carter, J & Traynor, J are of the opinion that the petition should be granted.

Gibson, Chief Justice.

Filed Feb. 16, 1955, William I. Sullivan, Clerk, by Joseph M. Rogers, S. F. Deputy.

[fol. 769A] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 770] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI.—Filed October 10, 1955

The petition herein for a writ of certiorari to the Supreme Court of the State of California is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(6774-4)

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1955

No.

MABEL BLACK and T. Y. WULFF, in a representative capacity for, by and on behalf of Bio-Lab Union of Local 225, United Office and Professional Workers of America, its officers and members,

Petitioner,

vs.

CUTTER LABORATORIES, a corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

to the Supreme Court of the
State of California.

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of California, entered in the above-entitled case on January 18, 1955, rehearing denied on February 16, 1955.